

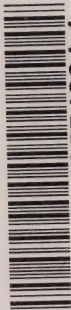
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Legislative Proposals and Explanatory Notes Relating to Income Tax



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Published by
The Honourable Paul Martin, P.C., M.P.
Minister of Finance

November 1999

Canada

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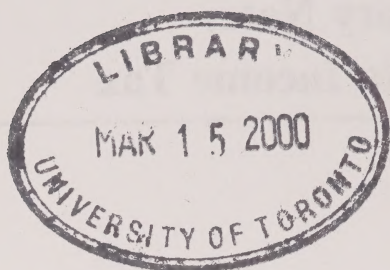
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Department of Finance
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Cette publication est également disponible en français

CAT: F2-138/1999-1E

ISBN: 0-662-28336-8




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Legislative Proposals



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PART 1

INCOME TAX ACT

1. (1) Paragraph 7(1.4)(a) of the *Income Tax Act* is replaced by the following:

(a) a taxpayer disposes of rights under an agreement referred to in subsection (1) or (1.1) to acquire securities of a particular qualifying person that made the agreement or of a qualifying person with which it does not deal at arm's length (which rights and securities are referred to in this subsection as the "exchanged option" and the "old securities", respectively),

(2) Subsection (1) applies to the 1998 and subsequent taxation years.

2. (1) Paragraph 8(1)(a) of the Act is repealed.

(2) Subsection 8(10) of the Act is replaced by the following:

**Certificate of
employer**

(10) An amount otherwise deductible for a taxation year under paragraph (1)(f), (h) or (h.1) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless a prescribed form signed by the taxpayer's employer certifying that the conditions set out in that paragraph or subparagraph, as the case may be, were met in the year in respect of the taxpayer is filed with the taxpayer's return of income for the year.

(3) Subsections (1) and (2) apply to the 1998 and subsequent taxation years.

3. (1) Paragraph 12(1)(c) of the Act is replaced by the following:

Interest

(c) subject to subsections (3) and (4.1), any amount received or receivable by the taxpayer in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's income) as, on account of, in lieu of payment of or in satisfaction of, interest to the extent that the interest was not included in computing the taxpayer's income for a preceding taxation year;

(2) Subsection (1) applies to taxation years that end after September 1997.

4. (1) Paragraph 13(21.2)(a) of the Act is replaced by the following:

(a) a person or partnership (in this subsection referred to as the "transferor") disposes at a particular time (otherwise than in a disposition described in any of paragraphs (c) to (g) of the definition "superficial loss" in section 54) of a depreciable property of a particular prescribed class of the transferor,

(2) Subparagraph 13(21.2)(e)(ii) of the Act is replaced by the following:

(ii) where two or more properties of a prescribed class of the transferor are disposed of at the same time, subparagraph (i) applies as if each property so disposed of had been separately disposed of in the order designated by the transferor or, if the transferor does not designate an order, in the order designated by the Minister,

(3) Subsections (1) and (2) apply after ANNOUNCEMENT DATE except that, if an individual (other than a trust) elects in writing filed with the Minister of National Revenue on or before the individual's filing-due date for the taxation year in which this Act is assented to, subsection (1) does not apply in respect of the disposition of a property by the individual before July 2000

(a) to a person who was obliged on ANNOUNCEMENT DATE to acquire the property pursuant to the terms of an agreement in writing made on or before that day; or

(b) in a transaction, or as part of a series of transactions, the arrangements for which, evidenced in writing, were substantially advanced on or before ANNOUNCEMENT DATE, other than a transaction or series a main purpose of which can reasonably be considered to have been to enable an unrelated person to obtain the benefit of

(i) any deduction in computing income, taxable income, taxable income earned in Canada or tax payable under the *Income Tax Act*, or

(ii) any balance of undeducted outlays, expenses or other amounts.

5. (1) Section 17 of the Act is amended by adding the following after subsection (11):

**Determination of
whether persons
related**

5

(11.1) For the purpose of this section, in determining whether persons are related to each other at any time, any rights referred to in subparagraph 251(5)(b)(i) are deemed not to exist at that time to the extent that the exercise of those rights is prohibited at that time under a law, of the country under the law of which the corporation was formed or last continued and is governed, that restricts the foreign ownership or control of the corporation. 10

(2) Subsection (1) applies to taxation years that begin after February 23, 1998.

6. (1) Subparagraph 18(9)(a)(ii) of the Act is replaced by the following: 15

(ii) as, on account of, in lieu of payment of or in satisfaction of, interest, taxes (other than taxes imposed on an insurer in respect of insurance premiums of a non-cancellable or guaranteed renewable accident and sickness insurance policy, or a life insurance policy other than a group term life insurance policy that provides coverage for a period of 12 months or less), rent or royalties in respect of a period that is after the end of the year, or 20

(2) Section 18 of the Act is amended by adding the following after subsection (9.01): 25

**Application of
subsection (9) to
insurers**

(9.02) For the purpose of subsection (9), an outlay or expense made by an insurer on account of the acquisition of an insurance policy (other than a non-cancellable or guaranteed renewable accident and sickness insurance policy or a life insurance policy other than a group term life insurance policy that provides coverage for a period of 12 months or less) is deemed to be an expense incurred as consideration for services rendered consistently throughout the period of coverage of the policy. 30 35

(3) Subsections (1) and (2) apply to the 2000 and subsequent taxation years and, where a taxpayer so elects by notifying the Minister of National Revenue in writing on or before the taxpayer's filing-due date for the taxpayer's taxation year in which this Act

receives Royal Assent, they also apply to the 1998 and 1999 taxation years.

7. (1) Subsection 18.1(15) of the Act is replaced by the following:

**Non-applicability of
section 18.1**

5

(15) Subject to subsections (1) and (14), this section does not apply to a taxpayer's matchable expenditure in respect of a right to receive production if

(a) no portion of the expenditure can reasonably be considered to have been paid to another taxpayer, or to a person with whom the other taxpayer does not deal at arm's length, to acquire the right from the other taxpayer and 10

(i) the taxpayer's expenditure cannot reasonably be considered to relate to a tax shelter or tax shelter investment (as defined in section 143.2) and none of the main purposes for making the expenditure is that the taxpayer, or a person with whom the taxpayer does not deal at arm's length, obtain a tax benefit, or 15

(ii) before the end of the taxation year in which the expenditure is made, the total of all amounts each of which is included in computing the taxpayer's income for the year (other than any portion of such an amount that is the subject of a reserve claimed by the taxpayer for the year under this Act) in respect of the right to receive production to which the matchable expenditure relates exceeds 80% of the expenditure; or 20

(b) the expenditure is in respect of commissions or other expenses related to the issuance of an insurance policy for which all or a portion of a risk has been ceded to the taxpayer (in this paragraph referred to as the "reinsurer) and both the reinsurer and the person to whom the expenditure is made or is to be made are insurers subject to the supervision of 25 30

(i) the Superintendent of Financial Institutions, in the case of an insurer that is required by law to report to the Superintendent of Financial Institutions, or 35

(ii) in any other case, the Superintendent of Insurance or other similar officer or authority of the province under whose laws the insurer is incorporated. 40

(2) Subsection (1) applies to expenditures made after November 17, 1996.

40

8. (1) The portion of paragraph 20(1)(e) of the Act before subparagraph (i) is replaced by the following:

**Expenses re
financing**

(e) such part of an amount (other than an excluded amount) that is 5
not otherwise deductible in computing the income of the taxpayer
and that is an expense incurred in the year or a preceding taxation
year,

**(2) The portion of paragraph 20(1)(e) of the Act after 10
subparagraph (ii.2) and before subparagraph (iii) is replaced by the
following:**

(including a commission, fee, or other amount paid or payable for or on
account of services rendered by a person as a salesperson, agent or
dealer in securities in the course of the issuance, sale or borrowing) that
is the lesser of 15

**(3) Paragraph 20(1)(e) of the Act is amended by adding the
following subparagraph before subparagraph (v):**

(iv.1) "excluded amount" means

(A) an amount paid or payable as or on account of the
principal amount of a debt obligation or interest in respect of 20
a debt obligation,

(B) an amount that is contingent or dependent on the use of,
or production from, property, or

(C) an amount that is computed by reference to revenue,
profit, cash flow, commodity price or any other similar 25
criterion or by reference to dividends paid or payable to
shareholders of any class of shares of the capital stock of a
corporation,

**(4) Subsections (1) to (3) apply with respect to expenses incurred
by a taxpayer after ANNOUNCEMENT DATE, other than expenses 30
incurred pursuant to a written agreement made by the taxpayer on
or before ANNOUNCEMENT DATE.**

9. (1) Subsection 27(2) of the Act is replaced by the following:

Presumption

(2) Notwithstanding any other provision of this Act, a prescribed federal Crown corporation and any corporation controlled by such a corporation are each deemed not to be a private corporation and paragraphs 149(1)(d) to (d.4) do not apply to those corporations.

(2) Subsection (1) applies to taxation years and fiscal periods that begin after 1998.

10. (1) Paragraph 40(3.14)(a) of the Act is replaced by the following:

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions that another member of the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership);

(2) Subsection (1) applies after 1997.

11. (1) Section 43 of the Act is renumbered as subsection 43(1).

(2) Section 43 of the Act is amended by adding the following after subsection (1):

Ecological gifts

(2) For the purposes of subsection (1) and section 53, where at any time a taxpayer disposes of a servitude, covenant or easement to which land is subject in circumstances where subsection 110.1(5) or 118.1(12) applies,

(a) the portion of the adjusted cost base to the taxpayer of the land immediately before the disposition that can reasonably be regarded as attributable to the servitude, covenant or easement, as the case may be, is deemed to be equal to the amount determined by the formula

$$A \times B/C$$

where

- A is the adjusted cost base to the taxpayer of the land immediately before the disposition,
- B is the amount determined under subsection 110.1(5) or 118.1(12) in respect of the disposition, and
- C is the fair market value of the land immediately before the disposition; and

5

(b) for greater certainty, the cost to the taxpayer of the land shall be reduced at the time of disposition by the amount determined under paragraph (a).

10

(3) Subsection (1) applies after February 27, 1995.

(4) Subsection (2) applies in respect of gifts made after February 27, 1995.

15

12. (1) The portion of subsection 44(1) of the Act before paragraph (a) is replaced by the following:

**Exchanges of
property**

44. (1) Where at any time in a taxation year (in this subsection referred to as the "initial year") an amount has become receivable by a taxpayer as proceeds of disposition of a capital property that is not a share of the capital stock of a corporation (which capital property is in this section referred to as the taxpayer's "former property") that is either

20

(2) Subsection (1) applies to shares disposed of after April 15, 1999 other than shares disposed of after that date as a consequence of a public takeover bid or offer filed with a public authority before April 16, 1999.

25

13. (1) Subparagraph 48.1(1)(a)(ii) of the Act is replaced by the following:

30

(ii) immediately after that time, ceases to be a small business corporation because a class of its or another corporation's shares is listed on a prescribed stock exchange, and

(2) Subsection (1) applies to corporations that cease to be small business corporations after 1999.

35

(3) Where a corporation ceases to be a Canadian-controlled private corporation in a taxation year solely because of the application of subsection 36(1) of this Act, an election under

subsection 48.1(1) of the *Income Tax Act*, as amended by subsection (1), that is made by an individual in respect of the 2000 taxation year is deemed to have been made on time if the election is made on or before the individual's filing-due date for the taxation year in which this Act is assented to.

5

14. (1) Paragraph (c) of the definition "principal residence" in section 54 of the Act is replaced by the following:

(c) where the taxpayer is an individual other than a personal trust, unless the particular property was designated by the taxpayer in prescribed form and manner to be the taxpayer's principal residence for the year and no other property has been designated for the purposes of this definition for the year

(i) where the year is before 1982, by the taxpayer, or

(ii) where the year is after 1981,

(A) by the taxpayer,

15

(B) by a person who was throughout the year the taxpayer's spouse (other than a spouse who was throughout the year living apart from, and was separated under a judicial separation or written separation agreement from, the taxpayer),

(C) by a person who was the taxpayer's child (other than a child who was at any time in the year a married person or 18 years of age or older), or

(D) where the taxpayer was not at any time in the year a married person or 18 years of age or older, by a person who was the taxpayer's

25

(I) mother or father, or

(II) brother or sister, where that brother or sister was not at any time in the year a married person or 18 years of age or older,

(2) Subsection (1) applies to dispositions that occur after 1990.

30

15. (1) Subsection 55(1) of the Act is amended by adding the following in alphabetical order:

"specified
corporation"
« *société
déterminée* »

"specified corporation" in relation to a distribution means a distributing corporation 5

(a) that is a public corporation or a specified wholly-owned corporation of a public corporation,

10

(b) shares of the capital stock of which are exchanged for shares of the capital stock of another corporation (referred to in this definition as an "acquiror") in an exchange to which the definition "permitted exchange" in this subsection would apply if that definition were read without reference to paragraph (a) and 15 subparagraph (b)(ii) of it,

(c) that does not make a distribution, to a corporation that is not an acquiror, after 1998 and before the day that is three years after the day on which the shares of the capital stock of the distributing corporation are exchanged in a transaction described in paragraph (b), and 20

(d) no acquiror in relation to which makes a distribution after 1998 and before the day that is three years after the day on which the shares of the capital stock of the distributing corporation are exchanged in a transaction described in paragraph (b), 25

and, for the purposes of paragraphs (c) and (d),

30

(e) a corporation that is formed by an amalgamation of two or more other corporations is deemed to be the same corporation as, and a continuation of, each of the other corporations, and

(f) where there has been a winding-up of a corporation to which subsection 88(1) applies, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary; 35

"specified wholly-
owned corporation"
« *filiale à cent pour
cent déterminée* »

40

"specified wholly-owned corporation" of a public corporation means a corporation all of the outstanding shares of the capital stock of which (other than directors' qualifying shares and shares of a specified class) are held by 45

(a) the public corporation,

(b) a specified wholly-owned corporation of the public corporation, or

(c) any combination of corporations described in paragraph (a) or (b).

5

(2) Section 55 of the Act is amended by adding the following after subsection (3.01):

**Distribution by a
specified corporation**

10

(3.02) For the purposes of the definition "distribution" in subsection (1), where the distributing corporation is a specified corporation, the references in that definition to

(a) "each type of property" shall be read as "property"; and

15

(b) "property of that type" shall be read as "property".

(3) The portion of paragraph 55(5)(e) of the French version of the Act before subparagraph (i) is replaced by the following :

e) pour déterminer si des personnes sont liées entre elles, si une personne est un actionnaire déterminé d'une société et si le contrôle d'une société a été acquis par une personne ou un groupe de personnes, les règles suivantes s'appliquent :

20

(4) Subparagraph 55(5)(e)(iv) of the Act is replaced by the following:

(iv) this Act shall be read without reference to subsection 251(3) and paragraph 251(5)(b);

25

(5) Subsections (1) and (2) apply to transfers that occur after 1998.

(6) Subsections (3) and (4) apply to dividends that are received after ANNOUNCEMENT DATE, other than dividends received as part of a transaction or event, or a series of transactions or events, that was required on or before that day to be carried out pursuant to a written agreement made on or before that day.

30

16. (1) Paragraph (b) of the definition "earned income" in subsection 63(3) of the Act is replaced by the following:

35

(b) all amounts that are included, or that would, but for paragraph 81(1)(a) or subsection 81(4), be included, because of section 6 or 7 or paragraph 56(1)(n), (o) or (r), in computing the taxpayer's income,

(2) Subsection (1) applies to the 1998 and subsequent taxation years. 5

17. (1) Subsection 81(3.1) of the Act is replaced by the following:

Travel expenses

(3.1) There shall not be included in computing an individual's income for a taxation year an amount (not in excess of a reasonable amount) received by the individual from an employer with whom the individual was dealing at arm's length as an allowance for, or reimbursement of, travel expenses incurred by the individual in the year in respect of the individual's part-time employment in the year with the employer (other than expenses incurred in the performance of the duties of the individual's part-time employment) if 15

(a) throughout the period in which the expenses were incurred,

(i) the individual had other employment or was carrying on a business, or

(ii) where the employer is a designated educational institution (as defined in subsection 118.6(1)), the duties of the individual's part-time employment were the provision in Canada of a service to the employer in the individual's capacity as a professor or teacher; and 20

(b) the duties of the individual's part-time employment were performed at a location not less than 80 kilometres from, 25

(i) where subparagraph (a)(i) applies, both the individual's ordinary place of residence and the place of the other employment or business referred to in that subparagraph, and

(ii) where subparagraph (a)(ii) applies, the individual's ordinary place of residence. 30

**Payments for
volunteer services**

(4) Where

(a) an individual was employed or otherwise engaged in a taxation 5
year by a government, municipality or public authority (in this
subsection referred to as "the employer") and received in the year
from the employer one or more amounts for the performance, as a
volunteer, of the individual's duties as

(i) an ambulance technician, 10

(ii) a firefighter, or

(iii) a person who assists in the search or rescue of individuals or 15
in other emergency situations, and

(b) if the Minister so demands, the employer has certified in writing
that

(i) the individual was in the year a person described in paragraph 20
(a), and

(ii) the individual was at no time in the year employed or
otherwise engaged by the employer, otherwise than as a 25
volunteer, in connection with the performance of any of the duties
referred to in paragraph (a) or of similar duties,

there shall not be included in computing the individual's income derived
from the performance of those duties the lesser of \$1,000 and the total 30
of those amounts.

**(2) Subsection 81(3.1) of the Act, as enacted by subsection (1),
applies to the 1995 and subsequent taxation years and,
notwithstanding subsections 152(4) to (5) of the Act, any assessment 35
of an individual's tax payable under the Act for any taxation year
that ends before 2000 shall be made that is necessary to take into
account the application of subsection 81(3.1).**

**(3) Subsection 81(4) of the Act, as enacted by subsection (1),
applies to the 1998 and subsequent taxation years.** 40

**18. (1) Section 85.1 of the Act is amended by adding the
following after subsection (4):**

**Foreign share for
foreign share
exchange**

(5) Subject to subsections (3) and (6) and 95(2), where a corporation resident in a country other than Canada (in this section referred to as the "foreign purchaser") issues shares of its capital stock (in this section referred to as the "issued foreign shares") to a taxpayer (in this section referred to as the "vendor") in exchange for shares of the capital stock of another corporation resident in a country other than Canada (in this section referred to as the "exchanged foreign shares") that were immediately before the exchange capital property of the vendor, except where the vendor has, in the vendor's return of income for the taxation year in which the exchange occurred, included in computing the vendor's income for that year any portion of the gain or loss, otherwise determined, from the disposition of the exchanged foreign shares, the vendor is deemed

(a) to have disposed of the exchanged foreign shares for proceeds of disposition equal to the adjusted cost base to the vendor of those shares immediately before the exchange, and

(b) to have acquired the issued foreign shares at a cost to the vendor equal to the adjusted cost base to the vendor of the exchanged foreign shares immediately before the exchange,

and where the exchanged foreign shares were taxable Canadian property of the vendor, the issued foreign shares so acquired by the vendor are deemed to be taxable Canadian property of the vendor.

**Where subsection (5)
does not apply**

(6) Subsection (5) does not apply where

(a) the vendor and foreign purchaser were, immediately before the exchange, not dealing with each other at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b) that is a right of the foreign purchaser to acquire the exchanged foreign shares);

(b) immediately after the exchange the vendor, persons with whom the vendor did not deal at arm's length or the vendor together with persons with whom the vendor did not deal at arm's length,

(i) controlled the foreign purchaser, or

(ii) beneficially owned shares of the capital stock of the foreign purchaser having a fair market value of more than 50% of the fair

market value of all of the outstanding shares of the capital stock of the foreign purchaser; or

(c) consideration other than issued foreign shares was received by the vendor for the exchanged foreign shares, notwithstanding that the vendor may have disposed of shares of the capital stock of the other corporation referred to in subsection (5) (other than the exchanged foreign shares) to the foreign purchaser for consideration other than shares of the capital stock of the foreign purchaser. 5

(2) Subsection (1) applies to exchanges that occur after 1995. 10

19. (1) Subparagraph 87(2)(u)(ii) of the Act is replaced by the following:

(ii) for the purposes of subsections 93(2) to (2.3), any exempt dividend received by the predecessor corporation on any such share is deemed to be an exempt dividend received by the new corporation on the share; 15

(2) The portion of subsection 87(8) of the Act before paragraph (a) is replaced by the following:

Foreign merger

(8) Subject to subsection 95(2), where there has been a foreign merger in which a taxpayer's shares or options to acquire shares of the capital stock of a corporation that was a predecessor foreign corporation immediately before the merger were exchanged for or became shares or options to acquire shares of the capital stock of the new foreign corporation or the foreign parent corporation, unless the taxpayer elects in the taxpayer's return of income for the taxation year in which the foreign merger took place not to have this subsection apply, subsections (4) and (5) apply to the taxpayer as if the references in those subsections to 20 25

(3) Subsection 87(8.1) of the Act is replaced by the following: 30

Definition of "foreign merger"

(8.1) For the purposes of this section, "foreign merger" means a merger or combination of two or more corporations each of which was, immediately before the merger or combination, resident in a country other than Canada (each of which is in this section referred to as a "predecessor foreign corporation") to form one corporate entity resident in a country other than Canada (in this section referred to as the "new foreign corporation") in such a manner that, and otherwise than as a 35

result of the distribution of property to one corporation on the winding-up of another corporation,

(a) all or substantially all the property (except amounts receivable from any predecessor foreign corporation or shares of the capital stock of any predecessor foreign corporation) of the predecessor foreign corporations immediately before the merger or combination becomes property of the new foreign corporation as a consequence of the merger or combination;

(b) all or substantially all the liabilities (except amounts payable to any predecessor foreign corporation) of the predecessor foreign corporations immediately before the merger or combination become liabilities of the new foreign corporation as a consequence of the merger or combination; and

(c) all or substantially all of the shares of the capital stock of the predecessor foreign corporations (except any shares or options owned by any predecessor foreign corporation) are exchanged for or become, because of the merger or combination,

(i) shares of the capital stock of the new foreign corporation, or

(ii) if, immediately after the merger, the new foreign corporation was controlled by another corporation (in this section referred to as the "foreign parent corporation") that was resident in a country other than Canada, shares of the capital stock of the foreign parent corporation.

(4) Subsection (1) applies after ANNOUNCEMENT DATE.

(5) Subsections (2) and (3) apply to mergers and combinations that occur after 1995, and where a taxpayer notifies the Minister of National Revenue in writing before the taxpayer's filing-due date for the taxation year in which this Act is assented to that the taxpayer makes the election referred to in subsection 87(8) of the *Income Tax Act*, as amended by subsection (2), in respect of a merger or combination that occurred before 1999, the election is deemed to have been validly made in respect of the merger or combination.

20. (1) The portion of subclause 88(1)(c)(vi)(B)(III) before sub-subclause 1 is replaced by the following:

(III) a corporation (other than a specified person or the subsidiary)

(2) Clause 88(1)(c.2)(iii)(A) of the Act is replaced by the following:

(A) the reference in the definition "specified shareholder" in subsection 248(1) to "the issued shares of any class of the capital stock of the corporation or of any other corporation that is related to the corporation" shall be read as "the issued shares of any class (other than a specified class) of the capital stock of the corporation or of any other corporation that is related to the corporation and that has a significant direct or indirect interest in any issued shares of the capital stock of the corporation", and

(3) Subsection 88(1) of the Act is amended by adding the following after paragraph (c.7):

(c.8) for the purpose of clause (c.2)(iii)(A), a specified class of the capital stock of a corporation is a class of shares of the capital stock of the corporation where

(i) the paid-up capital in respect of the class was not, at any time, less than the fair market value of the consideration for which the shares of that class then outstanding were issued,

(ii) the shares are non-voting in respect of the election of the Board of Directors of the corporation, except in the event of a failure or default under the terms or conditions of the shares,

(iii) under neither the terms and conditions of the shares nor any agreement in respect of the shares are the shares convertible into or exchangeable for shares other than shares of a specified class of the capital stock of the corporation, and

(iv) under neither the terms and conditions of the shares nor any agreement in respect of the shares is any holder of the shares entitled to receive on the redemption, cancellation or acquisition of the shares by the corporation or by any person with whom the corporation does not deal at arm's length an amount (excluding any premium for early redemption) greater than the total of the fair market value of the consideration for which the shares were issued and the amount of any unpaid dividends on the shares;

(4) The portion of subsection 88(4) of the Act before paragraph (a) is replaced by the following:

**Amalgamation
deemed not to be
acquisition of
control**

(4) For the purposes of paragraphs (1)(c), (c.2), (d) and (d.2) and, for 5
greater certainty, paragraphs (c.3) to (c.8) and (d.3),

(5) Subsections (1) to (4) apply to windings-up that begin after November 1994.

21. (1) Clause (a)(i)(A) of the definition "capital dividend account" in subsection 89(1) of the English version of the Act is 10
replaced by the following:

(A) the amount of the corporation's capital gain from a disposition (other than a disposition that is the making of a gift after December 8, 1997 that is not a gift described in subsection 110.1(1)) of a property in the period beginning 15
at the beginning of its first taxation year (that began after the corporation last became a private corporation and that ended after 1971) and ending immediately before the particular time

**(2) Subsection (1) applies to dispositions made after December 8, 20
1997, other than a disposition made under a written agreement made before December 9, 1997.**

22. (1) Section 91 of the Act is amended by adding the following after subsection (6):

**Shares acquired
from a partnership**

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(7) For the purpose of subsection (5), where a taxpayer resident in Canada acquires a share of the capital stock of a corporation that is immediately after the acquisition a foreign affiliate of the taxpayer from a partnership of which the taxpayer, or a corporation resident in Canada 30
with which the taxpayer was not dealing at arm's length at the time the share was acquired, was a member (each such person is referred to in this subsection as the "member") at any time during any fiscal period of the partnership that began before the acquisition,

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(a) that portion of any amount required by subsection 92(1) to be added to the adjusted cost base to the partnership of the share of the capital stock of the foreign affiliate equal to the amount included in the income of the member because of subsection 96(1) in respect of the amount that was included in the income of the partnership 40

because of subsection (1) or (3) in respect of the foreign affiliate and added to that adjusted cost base, and

(b) that portion of any amount required by subsection 92(1) to be deducted from the adjusted cost base to the partnership of the share of the capital stock of the foreign affiliate equal to the amount by which the income of the member from the partnership under subsection 96(1) was reduced because of the amount deducted in computing the income of the partnership under subsection (2), (4) or (5) and deducted from that adjusted cost base

is deemed to be an amount required by subsection 92(1) to be added or deducted, as the case may be, in computing the adjusted cost base to the taxpayer of the share.

(2) Subsection (1) applies to shares acquired after ANNOUNCEMENT DATE.

23. (1) Section 92 of the Act is amended by adding the following after subsection (3):

Disposition of a partnership interest

(4) Where a corporation resident in Canada or a foreign affiliate of a corporation resident in Canada has at any time disposed of all or a portion of an interest in a partnership of which it was a member, there shall be added, in computing the proceeds of disposition of that interest, the amount determined by the formula

$$(A-B) \times C/D$$

where

A is the amount, if any, by which

(a) the total of all amounts each of which is an amount that was deductible under paragraph 113(1)(d) by the member from its income in computing its taxable income for any taxation year of the member that began before that time in respect of any portion of a dividend received by the partnership, or would have been so deductible if the member were a corporation resident in Canada,

exceeds

(b) the total of all amounts each of which is the portion of any income or profits tax paid by the partnership or the member of the partnership to a government of a country other than Canada that can

reasonably be considered as having been paid in respect of the member's share of the dividend described in paragraph (a);

B is the total of

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(a) the total of all amounts each of which was an amount added under this subsection in computing the member's proceeds of a disposition before that time of another interest in the partnership, and

(b) the total of all amounts each of which was an amount deemed by subsection (5) to be a gain of the member from a disposition before that time of a share by the partnership;

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C is the adjusted cost base, immediately before that time, of the portion of the member's interest in the partnership disposed of by the member at that time; and

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D is the adjusted cost base, immediately before that time, of the member's interest in the partnership immediately before that time.

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**Deemed gain from
the disposition of a
share**

(5) Where a partnership has, at any time in a fiscal period of the partnership at the end of which a corporation resident in Canada or a foreign affiliate of a corporation resident in Canada was a member, disposed of a share of the capital stock of a corporation, the amount determined under subsection (6) in respect of such a member is deemed to be a gain of the member from the disposition of the share by the partnership for the member's taxation year in which the fiscal period of the partnership ends.

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Formula

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(6) The amount determined for the purposes of subsection (5) is the amount determined by the formula

$$A - B$$

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where

A is the amount, if any, by which

(a) the total of all amounts each of which is an amount that was deductible under paragraph 113(1)(d) by the member from its income in computing its taxable income for a taxation year in respect of any portion of a dividend received by the partnership on the share in a

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fiscal period of the partnership that began before the time referred to in subsection (5) and ends in the member's taxation year, or would have been so deductible if the member were a corporation resident in Canada,

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exceeds

(b) the total of all amounts each of which is the portion of any income or profits tax paid by the partnership or the member to a government of a country other than Canada that can reasonably be considered as having been paid in respect of the member's share of the dividend described in paragraph (a), and

B is the total of all amounts each of which is an amount that was added under subsection (4) in computing the member's proceeds of a disposition before the time referred to in subsection (5) of an interest in the partnership.

(2) Subsection (1) applies to dispositions that occur after ANNOUNCEMENT DATE.

24. (1) Subparagraph 93(1)(b)(ii) of the Act is replaced by the following:

(ii) for the purposes of determining the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax of the affiliate in respect of the corporation resident in Canada (within the meanings assigned by Part LIX of the Regulations), the affiliate is deemed to have redeemed at the time of disposition shares of a class of its capital stock.

(2) Section 93 of the Act is amended by adding the following after subsection (1.1):

**Disposition of a
share of a foreign
affiliate held by a
partnership**

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(1.2) Where a particular corporation resident in Canada or a foreign affiliate of the particular corporation (each of which is referred to in this subsection as the "disposing corporation") would, but for this subsection, have a taxable capital gain from a disposition by a partnership, at any time, of a share of the capital stock of a foreign affiliate of the particular corporation and the particular corporation so elects in prescribed manner in respect of the disposition,

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(a) 4/3 of

(i) the amount designated by the particular corporation (which amount shall not exceed the amount of the disposing corporations's taxable capital gain from the disposition of the share), or

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(ii) where subsection (1.3) applies, the amount prescribed for the purpose of that subsection

in respect of the share is deemed to have been a dividend received on the share by the disposing corporation from the affiliate 10 immediately before that time;

(b) notwithstanding section 96, the disposing corporation's taxable capital gain from the disposition of the share is deemed to be the amount, if any, by which the disposing corporation's taxable capital 15 gain from the disposition of the share otherwise determined exceeds the amount designated by the particular corporation in respect of the share;

(c) for the purpose of any regulation made under this subsection, the 20 disposing corporation is deemed to have disposed of the share at that time and to have had a capital gain from the disposition of the share equal to $\frac{4}{3}$ of the disposing corporation's taxable capital gain from the disposition of the share;

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(d) for the purpose of section 113 in respect of the dividend referred to in paragraph (a), the disposing corporation is deemed to have owned the share on which that dividend was received; and

(e) where the disposing corporation has a taxable capital gain from 30 the partnership because of the application of subsection 40(3) to the partnership in respect of the share, for the purposes of this subsection, the share is deemed to have been disposed of by the partnership.

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Deemed election

(1.3) Where a foreign affiliate of a particular corporation resident in Canada has a gain from the disposition by a partnership at any time of shares of the capital stock of a foreign affiliate of the particular 40 corporation that are excluded property, the particular corporation is deemed to have made an election under subsection (1.2) in respect of each such share disposed of by the partnership and to have designated in the election an amount equal to such amount that is prescribed.

(3) Subsection 93(2) of the Act is replaced by the following:

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Loss limitation on disposition of share

(2) Where

(a) a corporation resident in Canada has a loss from the disposition by it at any time of a share of the capital stock of a foreign affiliate of the corporation (in this subsection referred to as the "affiliate share"), or 5

(b) a foreign affiliate of a corporation resident in Canada has a loss from the disposition by it at any time of a share of the capital stock of another foreign affiliate of the corporation resident in Canada that is not excluded property (in this subsection referred to as the "affiliate share"), 10

the amount of the loss is deemed to be the amount determined by the formula

$$A - (B - C) \quad 15$$

where

A is the amount of the loss determined without reference to this subsection, 20

B is the total of all amounts each of which is an amount received before that time, in respect of an exempt dividend on the affiliate share or on a share for which the affiliate share was substituted, by 25

(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada, 30

(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada, 35

C is the total of

(a) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from another disposition at or before that time by a corporation or foreign affiliate described in the description of B of the affiliate share or a share for which the affiliate share was substituted, was reduced under this subsection in respect of the exempt dividends referred to in the description of B, 40

(b) the total of all amounts each of which is $\frac{4}{3}$ of the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a previous disposition by a partnership of the affiliate share or a share for which the affiliate share was substituted, 5 was reduced under subsection (2.1) in respect of the exempt dividends referred to in the description of B,

(c) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from a disposition 10 at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under subsection (2.2) in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is $\frac{4}{3}$ of the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under 20 subsection (2.3) in respect of the exempt dividends referred to in the description of B.

**Loss limitation –
disposition of share
by partnership**

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(2.1) Where

(a) a corporation resident in Canada has an allowable capital loss 30 from a disposition at any time by a partnership of a share of the capital stock of a foreign affiliate of the corporation (in this subsection referred to as the "affiliate share"), or

(b) a foreign affiliate of a corporation resident in Canada has an 35 allowable capital loss from a disposition at any time by a partnership of a share of the capital stock of another foreign affiliate of the corporation resident in Canada that would not be excluded property of the affiliate if the affiliate owned the share immediately before it was disposed of (in this subsection referred to as the "affiliate 40 share"),

the amount of the allowable capital loss is deemed to be the amount determined by the formula

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$$A - (B - C)$$

where

- A is the amount of the allowable capital loss determined without reference to this subsection,
- B is 3/4 of the total of all amounts each of which was received before that time, in respect of an exempt dividend on the affiliate share or on a share for which the affiliate share was substituted, by
- (a) the corporation resident in Canada,
 - (b) a corporation related to the corporation resident in Canada,
 - (c) a foreign affiliate of the corporation resident in Canada, or
 - (d) a foreign affiliate of a corporation related to the corporation resident in Canada,
- C is the total of
- (a) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section,) of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of the affiliate share or a share for which the affiliate share was substituted, was reduced under this subsection in respect of the exempt dividends referred to in the description of B,
 - (b) the total of all amounts each of which is 3/4 of the amount by which a loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from another disposition at or before that time of the affiliate share or a share for which the affiliate share was substituted, was reduced under subsection (2) in respect of the exempt dividends referred to in the description of B,
 - (c) the total of all amounts each of which is 3/4 of the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under subsection (2.2) in respect of the exempt dividends referred to in the description of B, and
 - (d) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under subsection (2.3) in respect of exempt dividends referred to in the description of B.

**Loss limitation –
disposition of
partnership interest**

(2.2) Where

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(a) a corporation resident in Canada has a loss from the disposition by it at any time of an interest in a partnership (in this subsection referred to as the "partnership interest"), which has a direct or indirect interest in shares of the capital stock of a foreign affiliate of the corporation resident in Canada (in this subsection referred to as "affiliate shares"), or

(b) a foreign affiliate of a corporation resident in Canada has a loss from the disposition by it at any time of an interest in a partnership (in this subsection referred to as the "partnership interest"), which has a direct or indirect interest in shares of the capital stock of another foreign affiliate of the corporation resident in Canada that would not be excluded property if the shares were owned by the affiliate (in this subsection referred to as "affiliate shares")

the amount of the loss is deemed to be the amount determined by the formula

$$A - (B - C)$$

25

where

A is the amount of the loss determined without reference to this subsection,

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B is the total of all amounts each of which was received before that time, in respect of an exempt dividend on affiliate shares or on shares for which affiliate shares were substituted, by

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(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

(c) a foreign affiliate of the corporation resident in Canada, or

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(d) a foreign affiliate of a corporation related to the corporation resident in Canada, and

C is the total of

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(a) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from another

disposition at or before that time by a corporation or foreign affiliate described in the description of B of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2) in respect of the exempt dividends referred to in the description of B,

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(b) the total of all amounts each of which is $\frac{4}{3}$ of the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from another disposition at or before that time by a partnership of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2.1) in respect of the exempt dividends referred to in the description of B,

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(c) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under this subsection in respect of the exempt dividends referred to in the description of B, and

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(d) the total of all amounts each of which is $\frac{4}{3}$ of the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under subsection (2.3) in respect of the exempt dividends referred to in the description of B.

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**Loss limitation –
disposition of
partnership interest**

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(2.3) Where

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(a) corporation resident in Canada has an allowable capital loss from a partnership from a disposition at any time of an interest in another partnership that has a direct or indirect interest in shares of the capital stock of a foreign affiliate of the corporation resident in Canada (in this subsection referred to as "affiliate shares"), or

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(b) a foreign affiliate of a corporation resident in Canada has an allowable capital loss from a partnership from a disposition at any time by a partnership of an interest in another partnership which has a direct or indirect interest in shares of the capital stock of a foreign affiliate of the corporation resident in Canada that would not be excluded property of the affiliate if the affiliate owned the shares

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immediately before the disposition (in this subsection referred to as "affiliate shares"),

the amount of the allowable capital loss is deemed to be the amount determined by the formula

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$$A - (B - C)$$

where

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A is the amount of the allowable capital loss determined without reference to this subsection,

B is 3/4 of the total of all amounts each of which was received before that time, in respect of an exempt dividend on affiliate shares or on shares for which affiliate shares were substituted, by

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(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

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(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada, and

25

C is the total of

(a) the total of all amounts each of which is 3/4 of the amount by which a loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from another disposition at or before that time of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2) in respect of the exempt dividends referred to in the description of B,

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(b) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2.1) in respect of the exempt dividends referred to in the description of B,

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(c) the total of all amounts each of which is 3/4 of the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was

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reduced under subsection (2.2) in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under this subsection in respect of the exempt dividends referred to in the description of B. 5

(4) Subsection 93(3) of the Act is replaced by the following: 10

Exempt dividends

(3) For the purposes of subsections (2) to (2.3),

(a) a dividend received by a corporation resident in Canada is an exempt dividend to the extent of the amount in respect of the dividend that is deductible from the income of the corporation for the purpose of computing the taxable income of the corporation because of paragraph 113(1)(a), (b) or (c); and 15

(b) a dividend received by a particular foreign affiliate of a corporation resident in Canada from another foreign affiliate of the corporation is an exempt dividend to the extent of the amount, if any, by which the portion of the dividend that was not prescribed to have been paid out of the pre-acquisition surplus of the other affiliate exceeds the total of such portion of the income or profits tax that can reasonably be considered to have been paid in respect of that portion of the dividend by the particular affiliate or by a partnership in which the particular affiliate had, at the time of the payment of the income or profits tax, a partnership interest, either directly or indirectly. 20 25

(5) Subsections (1) to (4) apply to dispositions that occur after ANNOUNCEMENT DATE. 30

25. (1) The Act is amended by adding the following after section 93:

Shares held by a partnership

93.1 (1) For the purpose of determining whether a non-resident corporation is a foreign affiliate of a corporation resident in Canada for the purposes of subsection (2), sections 93 and 113 (and any regulation made under those sections) and section 95 to the extent that section is applied for the purposes of those provisions, where at any time shares 35

of a class of the capital stock of a corporation are owned by a partnership or are deemed under this subsection to be owned by a partnership, those shares are deemed to be owned at that time by each member of the partnership in a proportion equal to that proportion of the number of all such shares that

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(a) the fair market value of the member's interest in the partnership at that time

is of

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(b) the fair market value of all members' interests in the partnership at that time.

**Where dividends
received by a
partnership**

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(2) Where at any time shares of a class of the capital stock of a foreign affiliate of a corporation resident in Canada (in this subsection referred to as "affiliate shares") are owned by a partnership and at that time the affiliate pays a dividend on affiliate shares to the partnership (in this subsection referred to as the "partnership dividend"),

(a) for the purposes of sections 93 and 113 and any regulations made under section 93 or 113, each member of the partnership is deemed to have received the proportion of the partnership dividend that

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(i) the fair market value of the member's interest in the partnership at that time

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is of

(ii) the fair market value of all members' interests' in the partnership at that time;

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(b) for the purposes of sections 93 and 113 and any regulations made under section 93 or 113, the proportion of the partnership dividend deemed by paragraph (a) to have been received by a member of the partnership at that time is deemed to have been received by the member in equal proportions on each affiliate share that is property of the partnership at that time;

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(c) for the purpose of section 113, in respect of the dividend referred to in paragraph (a), each affiliate share referred to in paragraph (b) is deemed to be owned by each member of the partnership; and

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(d) notwithstanding paragraphs (a) to (c),

(i) where the corporation resident in Canada is a member of the partnership, the amount deductible by it under section 113 in respect of the dividend referred to in paragraph (a) shall not exceed the amount included in its income pursuant to subsection 96(1) in respect of the partnership dividend received by the partnership, and 5

(ii) where another foreign affiliate of the corporation resident in Canada is a member of the partnership, the amount included in that other affiliate's income in respect of the dividend referred to in paragraph (a) shall not exceed the amount that would be included in its income pursuant to subsection 96(1) in respect of the partnership dividend received by the partnership if the amount determined for H in the definition "foreign accrual property income" in subsection 95(1) were nil and this Act were read 15 without reference to this subsection.

(2) Subsection (1) applies to dividends received after ANNOUNCEMENT DATE.

26. (1) The formula in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following: 20

$$(A + A.1 + A.2 + B + C) - (D + E + F + G + \underline{H})$$

(2) The description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following:

F is the amount prescribed to be the deductible loss of the affiliate for 25 the year, and

(3) The definition "foreign accrual property income" in subsection 95(1) of the Act is amended by striking out the word "and" at the end of the description of F, by adding the word "and" at the end of the description of G and by adding the following after the description of G: 30

H is

(a) where the affiliate was a member of a partnership at the end of the fiscal period of the partnership that ended in the year and 35 the partnership received a dividend at a particular time in that fiscal period from a corporation that was, for the purposes of sections 93 and 113, a foreign affiliate of the taxpayer at that particular time, the portion of the amount of that dividend that is included in the value of A in respect of the affiliate for the year 40

and that is deemed by paragraph 93.1(2)(a) to have been received by the affiliate for the purposes of sections 93 and 113, and

(b) in any other case, nil.

(4) Paragraph 95(2)(g) of the Act is replaced with the following: 5

(g) where, because of a fluctuation in the value of the currency of a country other than Canada relative to the value of the Canadian dollar, a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout a taxation year of the particular affiliate has earned income or incurred a loss or realized a capital gain or a capital loss in the year, on 10

(i) the settlement of a debt obligation (other than a "specified debt obligation" as defined in subsection 142.2(1)), that was owing to

(A) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or any other non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year (referred to in this paragraph as a "qualified foreign corporation"), or 15

(B) the particular affiliate by a qualified foreign corporation, 20

(ii) the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, the particular affiliate or another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (other than a "mark-to-market property" as defined in subsection 142.2(1)), or 25

(iii) the disposition to a qualified foreign corporation of a share of the capital stock of another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (other than a "mark-to-market property" as defined in subsection 142.2(1)), 30

that income, gain or loss, as the case may be, is deemed to be nil; 35

(5) Paragraph 95(2)(h) of the Act is repealed.

(6) The portion of subsection 95(2.2) of the Act before paragraph (a) is replaced by:

**Rule for
subsection (2)**

(2.2) For the purpose of subsection (2),

(7) The portion of paragraph 95(6)(a) of the Act before subparagraph (i) is replaced by the following:

(a) where any person or partnership has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares of the capital stock of a corporation or interests in a partnership and

(8) Subparagraph 95(6)(a)(ii) is replaced by the following:

(ii) it can reasonably be considered that the principal purpose for the existence of the right is to permit any person to avoid, reduce or defer the payment of tax or any other amount that would otherwise be payable under this Act, those shares or partnership interests, as the case may be, are deemed to be owned by that person or partnership; and

(9) Paragraph 95(6)(b) of the Act is replaced by the following:

(b) where a person or partnership acquires or disposes of shares of the capital stock of a corporation or interests in a partnership, either directly or indirectly, and it can reasonably be considered that the principal purpose for the acquisition or disposition is to permit a person to avoid, reduce or defer the payment of tax or any other amount that would otherwise be payable under this Act, that acquisition or disposition is deemed not to have taken place, and where the shares or partnership interests were not issued by the corporation or partnership immediately before the acquisition, those shares or partnership interests, as the case may be, are deemed not to have been issued.

(10) Subsections (1), (3) and (7) to (9) apply after ANNOUNCEMENT DATE.

(11) Subsection (2) applies to taxation years of foreign affiliates that begin after ANNOUNCEMENT DATE.

(12) Subsections (4) to (6) apply to taxation years of a foreign affiliate of a taxpayer that begin after ANNOUNCEMENT DATE, except that, where the taxpayer so elects and notifies the Minister of National Revenue in writing before 2001 of its election, those subsections apply to taxation years of all of its foreign affiliates that began after 1994, and notwithstanding subsections 152(4) to (5) of the Act, any assessment of a taxpayer's tax payable under the Act for any of those taxation years shall be made that is necessary to take into account the application of subsections (4) to (6).

27. (1) Paragraph 96(2.4)(a) of the Act is replaced by the following:

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions that another member of the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership); 5 10

(2) Subsection (1) applies after 1997.

28. (1) The portion of subsection 104(21.2) of the Act before paragraph (a) is replaced by the following:

Beneficiaries' taxable capital gain

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(21.2) Where, for the purposes of subsection (21), a personal trust or a trust referred to in subsection 7(2) designates an amount in respect of a beneficiary in respect of its net taxable capital gains for a taxation year (in this subsection referred to as the "designation year"), 20

(2) Subsection (1) applies to trusts' taxation years that begin after February 22, 1994.

29. (1) The portion of clause 110(1)(d)(ii)(A) of the Act before subclause (I) is replaced by the following:

(A) the amount payable by the taxpayer to acquire the security 25
under the agreement (determined without reference to any
change in the value of a currency of a country other than
Canada relative to Canadian currency after the agreement was
made) is not less than the amount by which

**(2) The portion of paragraph 110(1)(d) of the Act after clause 30
(ii)(A) is replaced by the following:**

(B) at the time immediately after the agreement was made, the
taxpayer was dealing at arm's length with

(I) the particular qualifying person,

(II) each other qualifying person that, at that time, was an employer of the taxpayer and was not dealing at arm's length with the particular qualifying person, and

(III) each other qualifying person of which the taxpayer had, under the agreement, a right to acquire a security, and

(iii) where rights under the agreement were acquired by the taxpayer as a result of one or more dispositions to which subsection 7(1.4) applied, the requirements of clauses (ii)(A) and (B) would be satisfied if

(A) the agreement referred to in clauses (ii)(A) and (B) were the agreement (in this subparagraph referred to as the "original agreement") the rights under which were the subject of the first of those dispositions,

(B) the security referred to in clause (ii)(A) were a security that the taxpayer had a right to acquire under the original agreement, and

(C) the particular qualifying person referred to in clause (ii)(B) were the qualifying person that made the original agreement;

(3) Subsections (1) and (2) apply to the 1998 and subsequent taxation years.

30. (1) The portion of subsection 110.1(3) of the Act after paragraph (b) is replaced by the following:

such amount, not greater than the fair market value otherwise determined and not less than the adjusted cost base to the corporation of the property at that time, as the corporation designates in its return of income under section 150 for the year in which the gift is made is, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, deemed to be its proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the corporation.

(2) Subsection 110.1(5) of the Act is replaced by the following:

Ecological gifts

(5) For the purposes of applying subparagraph 69(1)(b)(ii), section 207.31 and this section in respect of a gift described in paragraph (1)(d) that is made by a taxpayer and that is a servitude, covenant or easement to which land is subject, the greater of

(a) the fair market value otherwise determined of the gift, and

(b) the amount by which the fair market value of the land is reduced as a result of the making of the gift

is deemed to be the fair market value (or, for the purpose of subsection (3), the fair market value otherwise determined) of the gift at the time the gift was made and, subject to subsection (3), to be the taxpayer's proceeds of disposition of the gift. 5

(3) Subsections (1) and (2) apply in respect of gifts made after February 27, 1995.

31. (1) Subsection 112(2.2) of the Act is replaced by the following: 10

Guaranteed shares

(2.2) No deduction may be made under subsection (1), (2) or 138(6) in computing the taxable income of a particular corporation in respect of a dividend received on a share of the capital stock of a corporation 15 that was issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 where

(a) a person or partnership (in this subsection and subsection (2.21) referred to as the "guarantor") that is a specified financial institution or a specified person in relation to any such institution, but that is 20 not the issuer of the share or an individual other than a trust, is, at or immediately before the time the dividend is paid, obligated, either absolutely or contingently and either immediately or in the future, to effect any undertaking (in this subsection and subsections (2.21) and (2.22) referred to as a "guarantee agreement"), including any 25 guarantee, covenant or agreement to purchase or repurchase the share and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the particular corporation or any specified person in relation to the particular corporation given to ensure that 30

(i) any loss that the particular corporation or a specified person in relation to the particular corporation may sustain by reason of the ownership, holding or disposition of the share or any other property is limited in any respect, or

(ii) the particular corporation or a specified person in relation to 35 the particular corporation will derive earnings by reason of the ownership, holding or disposition of the share or any other property; and

(b) the guarantee agreement was given as part of a transaction or event or a series of transactions or events that included the issuance of the share.

Exceptions

(2.21) Subsection (2.2) does not apply to a dividend received by a particular corporation on

(a) a share that is at the time the dividend is received a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1);

(b) a grandfathered share, a taxable preferred share issued before December 16, 1987 or a prescribed share;

(c) a taxable preferred share issued after December 15, 1987 and of a class of the capital stock of a corporation that is listed on a prescribed stock exchange where all guarantee agreements in respect of the share were given by one or more of the issuer of the share and persons that are related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the issuer, unless at the time the dividend is paid to the particular corporation, dividends in respect of more than 10 per cent of the issued and outstanding shares to which the guarantee agreement applies are paid to the particular corporation, or the particular corporation and specified persons in relation to the particular corporation; or

(d) a share

(i) that was not acquired by the particular corporation in the ordinary course of its business,

(ii) in respect of which the guarantee agreement was not given in the ordinary course of the guarantor's business, and

(iii) the issuer of which is, at the time the dividend is paid, related (otherwise than because of a right referred to in paragraph 251(5)(b)) to both the particular corporation and the guarantor.

Interpretation

(2.22) For the purposes of subsections (2.2) and (2.21),

(a) where a guarantee agreement in respect of a share is given at any particular time after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, otherwise than under a written arrangement to do so entered into before 8:00 p.m. Eastern Daylight Saving Time, June 18,

1987, the share is deemed to have been issued at the particular time and the guarantee agreement is deemed to have been given as part of a series of transactions that included the issuance of the share; and

(b) "specified person" has the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1). 5

(2) Subsection (1) applies in respect of dividends received after 1998.

32. (1) Clause (c.1)(ii)(B) of the description of B in subsection 118(1) of the Act is replaced by the following:

(B) resident in Canada and is the parent, grandparent, brother, 10
sister, aunt, uncle, nephew or niece of the individual or of the individual's spouse, and

(2) Subsection (1) applies to the 1998 and subsequent taxation years.

33. (1) Subsection 118.1(4) of the Act is replaced by the 15 following:

Gift in year of death

(4) Subject to subsection (13), a gift made by an individual in the particular taxation year in which the individual dies (including, for greater certainty, a gift otherwise deemed by subsection (5), (7), (7.1), 20 (13) or (15) to have been so made) is deemed, for the purpose of this section other than this subsection, to have been made by the individual in the immediately preceding taxation year, and not in the particular year, to the extent that an amount in respect of the gift is not deducted in computing the individual's tax payable under this Part for the 25 particular year.

(2) The portion of subsection 118.1(6) of the Act after paragraph (b) is replaced by the following:

and the fair market value of the property otherwise determined at that time exceeds its adjusted cost base to the individual, such amount, not 30 greater than the fair market value and not less than the adjusted cost base to the individual of the property at that time, as the individual or the individual's legal representative designates in the individual's return of income under section 150 for the year in which the gift is made is, 35 if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, deemed to be the individual's proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

(3) Subsections 118.1(7) and (7.1) of the Act are replaced by the following:

Gifts of art

(7) Except where subsection (7.1) applies, where at any time, whether by the individual's will or otherwise, an individual makes a gift described in the definition "total charitable gifts" or "total Crown gifts" in subsection (1) of a work of art that was

(a) created by the individual and that is property in the individual's inventory, or

(b) acquired under circumstances where subsection 70(3) applied,

and at that time the fair market value of the work of art exceeds its cost amount to the individual, the following rules apply:

(c) where the gift is made as a consequence of the death of the individual, the gift is deemed to have been made immediately before the death, and

(d) the amount, not greater than that fair market value at the time the gift is made and not less than cost amount of the property to the individual, that is designated in the individual's return of income under section 150 for the year in which the gift is made is, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, deemed to be the individual's proceeds of disposition of the work of art and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

Gifts of cultural property

(7.1) Where, at any time, whether by the individual's will or otherwise, an individual makes a gift described in the definition "total cultural gifts" in subsection (1) of a work of art that was

(a) created by the individual and that is property in the individual's inventory, or

(b) acquired under circumstances where subsection 70(3) applied,

and at that time the fair market value of the work of art exceeds its cost amount to the individual, the following rules apply:

(c) where the gift is made as a consequence of the death of the individual, the individual is deemed to have made the gift immediately before the death, and

(d) the individual is deemed to have received proceeds of disposition in respect of the gift equal to its cost amount to the individual at the time of the making of the gift. 5

(4) Subsection 118.1(12) of the Act is replaced by the following:

Ecological gifts

(12) For the purpose of applying subparagraph 69(1)(b)(ii), subsection 70(5), section 207.31 and this section in respect of a gift described in the definition "total ecological gifts" in subsection (1) that is made by a taxpayer and that is a servitude, covenant or easement to which land is subject, the greater of 10

(a) the fair market value otherwise determined of the gift, and 15

(b) the amount by which the fair market value of the land is reduced as a result of the making of the gift

is deemed to be the fair market value (or, for the purpose of subsection (6), the fair market value otherwise determined) of the gift at the time the gift was made and, subject to subsection (6), to be the taxpayer's proceeds of disposition of the gift. 20

(5) Subsections (1) and (3) apply to the 2000 and subsequent taxation years, and where a taxpayer or a taxpayer's legal representative so notifies the Minister of National Revenue in writing before 2001 of the intention of the taxpayer or the taxpayer's legal representative that this subsection apply in respect of a gift made after 1996 and before 2000, subsections (1) and (3) apply to the taxation year in which the gift was made and, where paragraph 118.1(7)(d) of the Act, as enacted by subsection (3), applies, the amount designated in the notice in respect of the gift is deemed to have been validly designated for the purposes of that paragraph in the taxpayer's return of income for the year in which the gift was made. 25 30

(6) Subsection (2) and (4) apply in respect of gifts made after February 27, 1995. 35

34. (1) The portion of the description of B in subsection 118.6(2) of the Act after paragraph (b) is replaced by the following:

if the enrolment is proven by filing with the Minister a certificate in prescribed form issued by the designated educational institution and containing prescribed information and, in respect of a designated educational institution described in subparagraph (a)(ii) of the definition "designated educational institution" in subsection (1), the individual has attained the age of 16 years before the end of the year and is enrolled in the program to obtain skills for, or improve the individual's skills in, an occupation. 5

(2) Subsection (1) applies to the 1999 and subsequent taxation years. 10

35. (1) The description of C in subsection 118.61(1) of the Act is replaced by the following:

C is the lesser of the value of B and the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under any of sections 118.1, 118.2, 118.5, 118.6, 118.62, 118.8, 118.9 and 121; 15

(2) Paragraph 118.61(2)(b) of the Act is replaced by the following:

(b) the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under any of sections 118.1, 118.2, 118.5, 118.6, 118.62, 118.8, 118.9 and 121. 20

(3) Subsections (1) and (2) apply to the 1999 and subsequent taxation years.

36. (1) The definition "Canadian-controlled private corporation" in subsection 125(7) of the Act is replaced by the following: 25

"Canadian-controlled private corporation"
« *société privée sous contrôle canadien* » 30

"Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than

(a) a corporation controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation), by one or more corporations described in paragraph (c), or by any combination of them, 35

(b) a corporation that would, if each share of the capital stock of a corporation that is owned by a non-resident person, by a public corporation (other than a prescribed venture capital corporation), or by a corporation described in paragraph (c) were owned by a particular person, be controlled by the particular person, or 5

(c) a corporation a class of the shares of the capital stock of which is listed on a prescribed stock exchange;

(2) Subsection (1) applies to taxation years that begin after 1999.

37. (1) Subsection 125.4(2) of the Act is amended by striking out the word "and" at the end of paragraph (a), by adding the word "and" at the end of paragraph (b) and by adding the following after paragraph (b): 10

(c) that definition does not apply to an amount to which section 37 applies.

(2) Subsection (1) applies after ANNOUNCEMENT DATE. 15

38. (1) The portion of the definition "eligible production corporation" in subsection 125.5(1) of the Act after paragraph (b) and before paragraph (c) is replaced by the following:

except a corporation that is, at any time in the year,

(2) Subsection (1) applies after ANNOUNCEMENT DATE. 20

39. (1) Paragraph (l) of the definition "investment tax credit" in subsection 127(9) of the Act is replaced by the following:

(l) any of the income is exempt income or is exempt from tax under this Part,

(2) Subsection (1) applies to all taxation years. 25

40. (1) The Act is amended by adding the following after subsection 129(3):

Application

(3.1) Where, in a taxation year that begins after November 12, 1981, a corporation that last became a private corporation on or before that date and that was throughout the year a private corporation, other than a Canadian-controlled private corporation, has included in its income for the year an amount in respect of property that the corporation 30

(a) disposed of before November 13, 1981,

(b) was obligated to dispose of under the terms of an agreement in writing entered into before November 13, 1981, or

(c) is deemed by subsection 44(2) to have disposed of at any time after November 12, 1981 because of an event referred to in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54 in respect of the disposition that occurred before November 13, 1981,

paragraph 3(a) shall apply as if the corporation were a Canadian-controlled private corporation throughout the year, except that the total of the amounts determined under that paragraph in respect of the corporation for the year shall not exceed the amount that would be so determined if the only income of the corporation for the year were the amount included in respect of the disposition of such property.

(2) Subsection (1) applies to taxation years that end after June 1995 and before 2003.

41. (1) Subparagraph 138(5)(b)(i) of the Act is replaced by the following:

(i) interest on borrowed money used to acquire designated insurance property for the year, or to acquire property for which designated insurance property for the year was substituted property, for the period in the year during which the designated insurance property was held by the insurer in respect of the business,

(2) Paragraph 138(5)(b) of the Act is amended by adding the word "or" at the end of subparagraph (ii), by striking out the word "or" at the end of subparagraph (iii) and by repealing subparagraph (iv).

(3) The portion of subsection 138(11.3) of the Act after paragraph (b) is replaced by the following:

the following rules apply:

(c) the insurer is deemed to have disposed of the property at the beginning of the year for proceeds of disposition equal to its fair market value at that time and to have reacquired the property immediately after that time at a cost equal to that fair market value,

(d) where paragraph (a) applies, any gain or loss arising from the disposition is deemed not to be a gain or loss from designated insurance property of the insurer in the year, and

(e) where paragraph (b) applies, any gain or loss arising from the disposition is deemed to be a gain or loss from designated insurance property of the insurer in the year. 5

(4) Paragraph 138(11.5)(b) of the Act is replaced by the following:

(b) the transferor has, at that time or within 60 days after that time, transferred all or substantially all of its designated insurance property 10 for that year determined as if that year ended immediately before that time (in this subsection referred to as the "transferred property") to a corporation (in this subsection referred to as the "transferee") that is a qualified related corporation (within the meaning assigned by subsection 219(8)) of the transferor that, immediately after that time, 15 began to carry on that insurance business in Canada and the consideration for the transfer includes shares of the capital stock of the transferee,

(5) Paragraph 138(11.91)(e) of the Act is replaced by the following: 20

(e) the insurer is deemed to have disposed, immediately before the beginning of the particular taxation year, of each property that is designated insurance property for the particular taxation year of the insurer for proceeds of disposition equal to the fair market value at that time and to have reacquired, at the beginning of the particular 25 taxation year, the property at a cost equal to that fair market value, and

(6) Paragraph 138(11.94)(b) of the Act is replaced by the following:

(b) the transferor has, at that time or within 60 days after that time, 30

(i) in the case of a transferor that is a life insurer and that carries on an insurance business in Canada and in a country other than Canada in the year, transferred all or substantially all of its designated insurance property in respect of the business for that year determined as if the year ended immediately before that 35 time, or,

(ii) in any other case, transferred all or substantially all of the property owned by it at that time and used by it in the year in, or

held by it in the year in the course of, carrying on that insurance business in Canada in that year,

to a corporation resident in Canada (in this subsection referred to as the "transferee") that is a subsidiary wholly-owned corporation of the transferor that, immediately after that time, began to carry on that insurance business in Canada and the consideration for the transfer includes shares of the capital stock of the transferee,

(7) The definition "designated insurance property" in subsection 138(12) of the Act is replaced by the following:

**"designated
insurance property"**
**« bien d'assurance
désigné »**

10

"designated insurance property" for a taxation year of an insurer (other than an insurer resident in Canada that at no time in the year carried on a life insurance business) that, at any time in the year, carried on an insurance business in Canada and in a country other than Canada, means property determined in accordance with prescribed rules except that, in its application to any taxation year, "designated insurance property" for the 1998 or a preceding taxation year means property that was, under this subsection as it read in its application to taxation years that ended in 1996, property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada;

(8) Subsections (1) to (7) apply to the 1997 and subsequent taxation years.

42. (1) Paragraph 147.2(4)(a) of the Act is replaced by the following:

Service after 1989

(a) the total of all amounts each of which is a contribution (other than a prescribed contribution) made by the individual in the year to a registered pension plan that is in respect of a period after 1989 or that is a prescribed eligible contribution, to the extent that the contribution was made in accordance with the plan as registered,

(2) Subsection (1) applies to contributions made after 1990.

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43. (1) Paragraph 147.3(5)(a) of the Act is replaced by the following:

(a) is a single amount no portion of which relates to an actuarial surplus;

(2) Section 147.3 of the Act is amended by adding the following after subsection (7):

**Transfer where
money purchase
plan replaces money
purchase plan**

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(7.1) An amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") in accordance with this subsection if 10

(a) the amount is a single amount;

(b) the amount is transferred in respect of the surplus (within the meaning assigned by the Regulations) under a money purchase provision (in this subsection referred to as the "former provision") of the transferor plan; 15

(c) the amount is transferred directly to another registered pension plan to be held in connection with a money purchase provision (in this subsection referred to as the "current provision") of the other plan; 20

(d) the amount is transferred in conjunction with the transfer of amounts from the former provision to the current provision on behalf of all or a significant number of members of the transferor plan whose benefits under the former provision are replaced by benefits under the current provision; and 25

(e) the transfer is acceptable to the Minister and the Minister has so notified the administrator of the transferor plan in writing. 30

(3) Paragraphs 147.3(8)(b) and (c) of the Act are replaced by the following:

(b) the amount is transferred in respect of the actuarial surplus under a defined benefit provision of the transferor plan; 35

(c) the amount is transferred directly to another registered pension plan to be held in connection with a money purchase provision of the other plan;

(4) Subsection (1) applies to transfers that occur after ANNOUNCEMENT DATE. 40

(5) Subsection (2) applies to transfers that occur after 1998.

(6) Subsection (3) applies to transfers that occur after 1990.

44. (1) Paragraphs 149(1)(d) to (d.2) of the Act are replaced by the following:

**Corporations owned
by the Crown**

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(d) a corporation, commission or association all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

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**Corporations 90%
owned by the Crown**

(d.1) a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

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**Wholly-owned
corporations**

(d.2) a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;

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(2) Subparagraph 149(1)(d.3)(i) of the Act is replaced by the following:

(i) one or more persons each of which is Her Majesty in right of Canada or a province or a person to which paragraph (d) or (d.2) applies for the period, or

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(3) Paragraph 149(1)(d.4) of the Act is replaced by the following:

**Combined
ownership**

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(d.4) a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or any of paragraphs (d) to (d.3) applies for the period;

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(4) The portion of paragraph 149(1)(d.6) of the Act before subparagraph (i) is replaced by the following:

**Subsidiaries of
municipal
corporations**

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(d.6) subject to subsections (1.2) and (1.3), a particular corporation all of the shares (except directors' qualifying shares) or the capital of which was owned by one or more persons each of which is a corporation, commission or association to which paragraph (d.5) or this paragraph applies for the period if the income for the period of 10 the particular corporation from activities carried on outside

(5) Subsection 149(1.1) of the Act is replaced by the following:

Exception

(1.1) Where at any time a person other than Her Majesty in right of Canada or a province or a municipality in Canada have a right under a 15 contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently to, or to acquire, shares or capital of a corporation, commission or association, paragraphs (1)(d) to (d.6) shall be applied as if the right had been exercised and the shares or capital had been so acquired immediately before that time and held at that time 20 by the person.

Election

(1.11) Subsection (1) does not apply in respect of a person's taxable income for a taxation year that begins after 1998 where

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(a) paragraph (1)(d) did not apply in respect of the person's taxable income for the person's last taxation year that began before 1999;

(b) paragraph (1)(d.2), (d.3) or (d.4) would, but for this subsection, have applied in respect of the person's taxable income for the 30 person's first taxation year that began after 1998;

(c) there has been no change in the ownership of the shares or capital of the person (other than a change with respect to directors' qualifying shares) since the beginning of the person's first taxation 35 year that began after 1998;

(d) the person has elected in writing in its return of income for its first taxation year that began after 1998 that this subsection apply; and

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(e) the person has not notified the Minister in writing before the year that the election has been revoked.

(6) Subsection 149(1.2) of the Act is replaced by the following:

Income test

(1.2) For the purposes of paragraphs (1)(d.5) and (d.6), income of a corporation, commission or association from activities carried on outside the geographical boundaries of a municipality does not include income from activities carried on

(a) under an agreement in writing between

(i) the corporation, commission or association, and 10

(ii) a person who is Her Majesty in right of Canada or a province or a municipality or corporation to which any of paragraphs (1)(d) to (d.6) applies and that is controlled by Her Majesty in right of Canada or a province or by a municipality in Canada

within the geographical boundaries of, 15

(iii) where the person is Her Majesty in right of Canada or a corporation controlled by Her Majesty in right of Canada, Canada,

(iv) where the person is Her Majesty in right of a province or a corporation controlled by Her Majesty in right of a province, the province, and 20

(v) where the person is a municipality in Canada or a corporation controlled by a municipality in Canada, the municipality; or

(b) in a province as

(i) a producer of electrical energy or natural gas, or 25

(ii) a distributor of electrical energy, heat, natural gas or water,

where the activities are regulated under the laws of the province.

(7) Subsections (1) to (6) apply to taxation years and fiscal periods that begin after 1998.

45. The portion of subsection 149.1(6.4) of the Act after paragraph (d) is replaced by the following: 30

applies in prescribed form to the Minister of National Revenue for registration, that Minister may register the organization for the purposes of this Act and, where the organization so applies or is so registered, this section, paragraph 38(a.1), sections 110.1, 118.1, 168, 172, 180 and 230, subsection 241(3.2) and Part V apply, with such modifications as the circumstances require, to the organization as if it were an applicant for registration as a charitable organization or as if it were a registered charity that is designated as a charitable organization, as the case may be.

46. (1) Section 152 of the Act is amended by adding the following after subsection (6):

**Reassessment where
amount included in
income under
subsection 91(1) is
reduced**

(6.1) Where

(a) a taxpayer has filed for a particular taxation year the return of income required by section 150,

(b) the amount included in computing the taxpayer's income for the particular year under subsection 91(1) is subsequently reduced because of a reduction in the foreign accrual property income of a foreign affiliate of the taxpayer for a taxation year of the affiliate that ends in the particular year and is

(i) attributable to the amount prescribed to be the deductible loss of the affiliate for the year that arose in a subsequent year of the affiliate that ends in a subsequent taxation year of the taxpayer, and

(ii) included in the description of F of the definition "foreign accrual property income" in subsection 95(1) in respect of the affiliate for the year, and

(c) the taxpayer has filed with the Minister, on or before the filing-date for the taxpayer's subsequent taxation year, a prescribed form amending the return,

the Minister shall reassess the taxpayer's tax for any relevant taxation year (other than a taxation year preceding the particular taxation year) in order to take into account the reduction in the amount included under subsection 91(1) in computing the income of the taxpayer for the year.

(2) Subsection (1) applies to taxation years of foreign affiliates that begin after ANNOUNCEMENT DATE.

47. (1) Paragraphs 164(1)(a) and (b) of the Act are replaced by the following:

(a) may,

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(i) before mailing the notice of assessment for the year, where the taxpayer is a qualifying corporation (as defined in subsection 127.1(2)) and claims in its return of income for the year to have paid an amount on account of its tax payable under this Part for the year because of subsection 127.1(1) in respect of its refundable investment tax credit (as defined in subsection 127.1(2)), refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under paragraph (f) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the taxpayer for the year exceeds the total determined under paragraph (g) of that definition in respect of the taxpayer for the year,

(ii) before mailing the notice of assessment for the year, where the taxpayer is a qualified corporation (as defined in subsection 125.4(1)) or an eligible production corporation (as defined in subsection 125.5(1)) and an amount is deemed under subsection 125.4(3) or 125.5(3) to have been paid on account of its tax payable under this Part for the year, refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the total of those amounts so deemed to have been paid, and

(iii) on or after mailing the notice of assessment for the year, refund any overpayment for the year, to the extent that the overpayment was not refunded pursuant to subparagraph (i) or (ii); and

(b) shall, with all due dispatch, make the refund referred to in subparagraph (a)(iii) after mailing the notice of assessment if application for it is made in writing by the taxpayer within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the taxpayer for the year if that subsection were read without reference to paragraph 152(4)(a).

(2) Subsection (1) applies to the 1999 and subsequent taxation years.

48. (1) The formula in subparagraph 180.2(4)(a)(ii) of the Act is replaced by the following:

(0.0125A - \$665)(1-B)

(2) Subsection (1) applies to amounts paid after ANNOUNCEMENT DATE.

5

49. (1) The description of C in subsection 190.1(1.1) of the Act is replaced by the following:

C is the number of days in the year that are after February 25, 1992 and before 2001.

(2) Subsection (1) applies to taxation years that end after 1998.

10

50. (1) Section 207.31 of the Act is replaced by the following:

**Tax payable by
recipient of an
ecological gift**

207.31. Any charity or municipality that at any time in a taxation 15
year, without the authorization of the Minister of the Environment or a
person designated by that Minister, disposes of or changes the use of a
property described in paragraph 110.1(1)(d) or in the definition "total
ecological gifts" in subsection 118.1(1) and given to the charity or
municipality after February 27, 1995 shall, in respect of the year, pay 20
a tax under this Part equal to 50% of the amount that would be
determined for the purposes of section 110.1 or 118.1, if this Act were
read without reference to subsections 110.1(3) and 118.1(6), to be the
fair market value of the property if the property were given to the
charity or municipality immediately before the disposition or change. 25

(2) Subsection (1) applies in respect of dispositions or changes that occur after ANNOUNCEMENT DATE.

51. (1) Subclause 212(1)(b)(ii)(C)(IV) of the Act is replaced by the following:

(IV) of a corporation, commission or association to which 30
any of paragraphs 149(1)(d) to (d.6) applies, or

(2) Subsection (1) applies to amounts paid or credited after 1998.

52. (1) Subsection 215(5) of the Act is replaced by the following:

**Regulations reducing
deduction or
withholding**

(5) The Governor in Council may make regulations in respect of any non-resident person or class of non-resident persons to whom any amount is paid or credited as, on account of, in lieu of payment of or in satisfaction of, any amount described in any of paragraphs 212(1)(h), (j) to (m) and (q) reducing the amount otherwise required by any of subsections (1) to (3) to be deducted or withheld from the amount so paid or credited.

(2) Subsection (1) applies after April 1997.

53. Paragraph 225.1(6)(b) of the Act is replaced by the following:

(b) an amount required to be deducted or withheld, or required to be remitted or paid, under this Act or the Regulations;

54. (1) The Act is amended by adding the following after subsection 227(4.2):

**Application to
Crown**

(4.3) For greater certainty, subsections (4) to (4.2) apply to Her Majesty in right of Canada or a province where Her Majesty in right of Canada or a province is a secured creditor (as defined in subsection 224(1.3)) or holds a security interest (as defined in that subsection).

(2) Subsection 227(16) of the Act is replaced by the following:

**Municipal or
provincial
corporation excepted**

(16) A corporation that at any time in a taxation year would be a corporation described in any of paragraphs 149(1)(d) to (d.6) but for a provision of an appropriation Act is deemed not to be a private corporation for the purposes of Part IV with respect to that year.

(3) Subsection (2) applies to taxation years that begin after 1998.

55. The portion of section 231 of the Act before the definition of "authorized person" is replaced by the following:

Definitions

In sections 231.1 to 231.7,

56. The Act is amended by adding the following after section 231.6:

Compliance order

5

231.7 (1) On summary application by the Minister five clear days after the service of the notice of application to the person against whom the order is sought, a judge may, notwithstanding subsection 238(2) but subject to section 232 and such conditions as the judge considers appropriate, order that the person provide such access, assistance, information or document sought by the Minister under section 231.1 or 231.2, where the judge is satisfied that 10

(a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document; and 15

(b) the person did not provide the access, assistance, information or document as required under section 231.1 or 231.2.

Contempt of court

20

(2) Where a person fails or refuses to comply with an order made under subsection (1), a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court that made the order. 25

Appeal

(3) An order under subsection (1) may be appealed to the court to which appeals from the court making the order normally lie. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made. 30

57. The portion of subsection 241(3.2) of the Act before paragraph (a) is replaced by the following:

Registered charities

35

(3.2) An official may provide to any person the following taxpayer information relating to another person that was at any time a registered charity (in this subsection referred to as the "charity"):

58. (1) Subsection 247(4) of the French version of the Act is replaced by the following:

**Documentation
ponctuelle**

(4) Pour l'application du paragraphe (3) et de la définition de « arrangement admissible de participation au coût » au paragraphe (1), un contribuable ou une société de personnes est réputé ne pas avoir fait d'efforts sérieux pour déterminer et utiliser les prix de transfert de pleine concurrence ou les attributions de pleine concurrence relativement à une opération ou ne pas avoir pris part à une opération qui est un arrangement admissible de participation au coût, à moins d'avoir à la fois :

a) établi ou obtenu, au plus tard à la date limite de production qui lui est applicable pour l'année d'imposition ou l'exercice, selon le cas, au cours duquel l'opération est conclue, des registres ou des documents contenant une description complète et exacte, quant à tous les éléments importants, de ce qui suit :

(i) les biens ou les services auxquels l'opération se rapporte,

(ii) les modalités de l'opération et leurs rapports éventuels avec celles de chacune des autres opérations conclues entre les participants à l'opération,

(iii) l'identité des participants à l'opération et les liens qui existent entre eux au moment de la conclusion de l'opération,

(iv) les fonctions exercées, les biens utilisés ou apportés et les risques assumés dans le cadre de l'opération par les participants,

(v) les données et méthodes prises en considération et les analyses effectuées en vue de déterminer les prix de transfert, l'attribution des bénéfices ou des pertes ou la participation aux coûts, selon le cas, relativement à l'opération,

(vi) les hypothèses, stratégies et principes éventuels ayant influé sur l'établissement des prix de transfert, l'attribution des bénéfices ou des pertes ou la participation aux coûts relativement à l'opération;

b) pour chaque année d'imposition ou exercice ultérieur où se poursuit l'opération, établi ou obtenu, au plus tard à la date limite de production qui lui est applicable pour l'année ou l'exercice, selon le cas, des registres ou des documents contenant une description complète et exacte de chacun des changements importants dont les

éléments visés aux sous-alinéas a)(i) à (vi) ont fait l'objet au cours de l'année ou de l'exercice relativement à l'opération;

c) fourni les registres ou documents visés aux alinéas a) et b) au ministre dans les trois mois suivant la signification à personne ou par courrier recommandé ou certifié d'une demande écrite les concernant. 5

(2) Subsection (1) applies with respect to adjustments made under subsection 247(2) of the Act for taxation years and fiscal periods that begin after 1998, except that

(a) subsection (1) does not apply to transactions completed before September 11, 1997; and 10

(b) a record or document made or obtained or provided to the Minister of National Revenue by a taxpayer or a partnership on or before the taxpayer's or partnership's documentation-due date for the taxpayer's or partnership's first taxation year or fiscal period, as the case may be, that begins after 1998 is deemed for the purpose of subsection 247(4) of the Act, as enacted by subsection (1), to have been so made, obtained or provided on a timely basis. 15

59. (1) The portion of the definition "grandfathered share" in subsection 248(1) of the Act after paragraph (d) is replaced by the following: 20

except that a share that is deemed under the definition "short-term preferred share", "taxable preferred share" or "term preferred share" in this subsection or under subsection 112(2.22) to have been issued at any time is deemed after that time not to be a grandfathered share for the purposes of that provision; 25

(2) Subsection (1) applies in respect of dividends received after 1998.

60. (1) The portion of paragraph 249.1(1)(b) of the Act after subparagraph (iii) is replaced by the following: 30

after the end of the calendar year in which the period began unless, in the case of a business, the business is not carried on in Canada and is a prescribed business or is carried on by a prescribed person or partnership, and

(2) Subsection (1) applies to fiscal periods that begin after 1994. 35

61. (1) Subsection 256 of the Act is amended by adding the following after subsection (6):

Simultaneous control

(6.1) For the purposes of this Act and for greater certainty,

(a) where a corporation (in this paragraph referred to as the "subsidiary") would be controlled by another corporation (in this paragraph referred to as the "parent") if the parent were not controlled by any person or group of persons, the subsidiary is controlled by

(i) the parent, and

(ii) any person or group of persons by whom the parent is controlled; and

(b) where a corporation (in this paragraph referred to as the "subject corporation") would be controlled by a group of persons (in this paragraph referred to as the "first-tier group") if no corporation that is a member of the first-tier group were controlled by any person or group of persons, the subject corporation is controlled by

(i) the first-tier group, and

(ii) any group of one or more persons comprised of, in respect of every member of the first-tier group, either the member, or a person or group of persons by whom the member is controlled.

Application to control in fact

(6.2) In its application to subsection (5.1), subsection (6.1) shall be read as if the references in subsection (6.1) to "controlled" were references to "controlled, directly or indirectly in any manner whatever,".

(2) Subsection (1) applies after ANNOUNCEMENT DATE.

62. (1) Subparagraph 258(3)(b)(ii) of the Act is replaced by the following:

(ii) was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 and is not deemed by paragraph 112(2.22) to have been issued after that time

(2) Subsection (1) applies in respect of dividends received after 1998.

PART 2

INCOME TAX AMENDMENTS ACT, 1998

63. (1) Subsection 82(8) of the *Income Tax Amendments Act, 1998* is replaced by the following:

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(8) Subsection (4) applies after February 24, 1998 except that, if on that day an individual who would, but for a tax treaty (as defined in subsection 248(1) of the *Income Tax Act*, as amended by this Act), be resident in Canada for the purposes of the *Income Tax Act* is, under the tax treaty, resident in another country, subsection (4) does not apply to the individual until the first time after February 24, 1998 at which the individual becomes, under a tax treaty, resident in a country other than Canada. 10

(2) Subsection (1) is deemed to have come into force on June 17, 1999. 15

Explanatory Notes

PREFACE

These explanatory notes describe proposed amendments to the *Income Tax Act*. Draft amendments to the *Income Tax Regulations*, with corresponding explanatory notes, are also included. These explanatory notes describe these amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable Paul Martin
Minister of Finance

These explanatory notes are provided to assist in an understanding of proposed amendments to the *Income Tax Act*. These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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Clause 1

Employee Options

ITA

7

Section 7 of the *Income Tax Act* deals with employee stock options. It sets out the rules for determining the amount to be included in an employee's income in respect of the exercise or sale of rights under an employment-related arrangement to sell or issue shares in a corporation or units in a trust.

Exchange of Options

ITA

7(1.4)(a)

Subsection 7(1.4) of the Act contains special provisions that apply when an individual disposes of rights to acquire securities under an employee security option agreement in exchange for other such rights. Paragraph 7(1.4)(a) uses the terms "exchanged option" and "old securities" to refer to the rights that have been disposed of and the securities that could have been acquired thereunder. Paragraph 7(1.4)(a) extends this terminology to paragraph 110(1)(d), which provides a special deduction in respect of certain security option benefits.

Paragraph 7(1.4)(a) is amended to remove the reference to "paragraph 110(1)(d)". This amendment is strictly consequential to changes to paragraph 110(1)(d), which no longer uses these terms. This amendment applies to 1998 and subsequent taxation years.

Clause 2

Income from Office or Employment – Deductions

ITA

8

Section 8 of the Act provides for the deduction of various amounts in computing income from an office or employment.

Subclause 2(1)

Volunteers' Deduction

ITA

8(1)(a)

Paragraph 8(1)(a) of the Act provides for a deduction of up to \$1,000 in respect of amounts received by an individual (and included in the individual's income) from a government, municipality or public authority for the performance, as a volunteer, of the taxpayer's duties as an ambulance technician, a firefighter or a person who assists in the search or rescue of individuals or in other emergency situations. This deduction is replaced by an equivalent exemption under subsection 81(4). For information on this exemption, see the commentary on new subsection 81(4).

This amendment applies to the 1998 and subsequent taxation years.

Subclause 2(2)

Certificate of Employer

ITA

8(10)

Subsection 8(10) of the Act provides that expenses will not be deductible by an employee under certain provisions unless the employee files with the return of income a prescribed form signed by the employer to the effect that the employee met the requirements of the relevant provisions for the deductibility of such expenses. The amendment to subsection 8(10) deletes a reference to paragraph

8(1)(a) and is strictly consequential on the repeal of that paragraph. The deduction available under that paragraph has been replaced with an equivalent exemption under subsection 81(4). For information on this exemption, see the commentary on new subsection 81(4).

This amendment applies to the 1998 and subsequent taxation years.

Clause 3

Income from Business or Property – Interest

ITA

12(1)(c)

Section 12 of the Act provides for the inclusion of various amounts in computing the income of a taxpayer for a taxation year from a business or property.

Paragraph 12(1)(c) requires that any interest received or receivable by a taxpayer in a taxation year be included in computing the taxpayer's income for the year. The existing reference in paragraph 12(1)(c) to subsection 12(5) is corrected to refer instead to subsection 12(4.1).

This amendment applies to taxation years that end after September 1997.

Clause 4

Depreciable Capital Property

ITA

13

Section 13 of the Act provides a number of special rules relating to the tax treatment of depreciable property. Generally, these rules apply for the purposes of sections 13 and 20 and the capital cost allowance regulations.

ITA

13(21.2)

Subsection 13(21.2) of the Act defers, in certain circumstances, the realization of a loss that would otherwise arise from the transfer of a depreciable property. The subsection applies where the transferor or a person affiliated with the transferor holds the transferred property, or has a right to acquire it, 30 days after the transfer. Until any one of certain events occurs, the transferor is treated as holding a notional depreciable property the capital cost of which is, in effect, the amount of the deferred loss.

Subsection 13(21.2) currently applies only where the transferor is a corporation, partnership or trust. The subsection is amended to apply to transfers by any person or partnership. The practical effect of the change is to make the rule apply to natural persons.

The subsection is also amended to clarify subparagraph 13(21.2)(e)(ii), by replacing references to the "taxpayer" with references to the "transferor." This clarification does not effect any substantive change to the provision.

Amended subsection 13(21.2) applies after Announcement Date. An optional exception is provided where an individual disposes of a property before July 1, 2000, in a transaction that meets either of two tests. The first test is that the disposition be to a person who was obliged on Announcement Date to acquire the property under an agreement in writing. The second test is that the disposition be a transaction (or part of a series) the arrangements for which (evidenced in writing) were substantially advanced by Announcement Date. Ineligible under the second test is any transaction or series of transactions a main purpose of which was to enable an unrelated person to obtain the benefit of a deduction or balance under the Act.

Where either of these tests is met, the transferor may elect not to have the first amendment described above apply to the disposition. Such an election must be made in writing and filed with the Minister of National Revenue on or before the transferor's filing-due date for the year in which these amendments receive Royal Assent.

Clause 5

Loan to Non-resident

ITA

17

Section 17 of the Act generally applies where a corporation resident in Canada has lent money to a non-resident and that loan remained outstanding for one year or longer without the corporation including interest on the loan, computed at a reasonable rate, in computing its income. Where subsection 17(1) applies, it treats the corporation as having received interest on the loan, computed at a prescribed rate, at the end of each taxation year during which the loan was outstanding.

Subsection 17(9) provides an exception to section 17 where the corporation resident in Canada and the non-resident are unrelated and various other conditions are met. Similarly, paragraph 17(3)(b) provides an exception in the case of an indirect loan to which section 17 would otherwise apply if the parties to the indirect loan are unrelated and various other conditions are met. In determining whether a person is related to a corporation, subparagraph 251(5)(b)(i) provides that a taxpayer that has a right to, or to acquire, some shares of the corporation is deemed to own those shares.

Determination of Whether Related

ITA

17(11.1)

New subsection 17(11.1) provides that, in determining whether two persons are related to each other for the purpose of section 17, any rights to, or to acquire, shares of a corporation described in subparagraph 251(5)(b)(i) held by either person will be ignored where the holder of the rights is prevented from exercising them because acquiring the shares would cause the holder to exceed foreign ownership restrictions that apply to the corporation.

The restriction is consistent with the existing exceptions under subparagraph 251(5)(b)(i) that provide that a right to, or to acquire, a share is not to be deemed to be equivalent to ownership of that share where the person cannot freely exercise the right because it is contingent on the death, bankruptcy or permanent disability of an individual.

New subsection 17(11.1) applies to taxation years that begin after February 23, 1998.

Clause 6

Income from Business or Property

ITA

18

Section 18 of the Act prohibits the deduction of certain outlays and expenses in computing a taxpayer's income from a business or property.

Subclause 6(1)

Limitation Respecting Prepaid Expenses

ITA

18(9)(a)(ii)

Subsection 18(9) of the Act defers the deduction of certain prepaid expenses to the taxation year to which the expenses relate.

Paragraph 18(9)(a) lists the prepaid amounts to which the subsection applies. Currently, these amounts include, amongst other amounts, taxes (other than taxes imposed on insurance premiums).

Subparagraph 18(9)(a)(ii) is amended to provide that only premium taxes imposed on an insurer in respect of a non-cancellable or guaranteed renewable accident and sickness insurance policy or a life insurance policy that is not a group term life insurance policy that provides coverage for a period not exceeding 12 months are excepted from subparagraph 18(9)(a)(ii) and continue to be deductible on a current basis. The amendment to subparagraph 18(9)(a)(ii) is

consequential on the addition of subsection 18(9.02) of the Act which requires the deferral of policy acquisition costs (which include premium taxes) generally in respect of non-life insurance policies.

This amendment applies to the 2000 and subsequent taxation years and, where a taxpayer so elects with respect to both it and new subsection 18(9.02), to the taxpayer's 1998 and 1999 taxation years as well.

Subclause 6(2)

Application of Subsection (9) to Insurers

ITA

18(9.02)

Currently, policy acquisition costs are deductible for tax purposes on a current basis. New subsection 18(9.02) deems an outlay or expense made by an insurer on account of the acquisition of an insurance policy (other than a non-cancellable or guaranteed renewable accident and sickness policy or a life policy that is not a group term life policy that provides coverage for a period not exceeding 12 months) to be an expense incurred for services rendered consistently throughout the period of coverage of the policy. Where such acquisition costs relate to an insurance policy that covers a period extending beyond the end of the insurer's taxation year, subsection 18(9) of the Act will apply to prorate the deductibility of the costs over the period of coverage of the policy. Generally accepted accounting principles (GAAP) identify policy acquisition costs to include premium taxes, commissions, and other costs directly related to the acquisition of premiums written.

This amendment applies to the 2000 and subsequent taxation years unless the taxpayer files an election to have it and amended subparagraph 18(9)(a)(ii) also apply to the 1998 and 1999 taxation years.

Clause 7**Matchable Expenditures**

ITA

18.1

Section 18.1 of the Act restricts the deductibility of an otherwise deductible "matchable expenditure" incurred in respect of a "right to receive production" by prorating the deductibility of the amount of the expenditure over the economic life of the right.

ITA

18.1(15)

Subsection 18.1(15) of the Act describes those matchable expenditures in respect of a right to receive production that are not subject to the matchable expenditure rules in section 18.1.

Concern has been expressed that the matchable expenditure rules may apply to a reinsurer's share of sales commissions or expenses incurred in respect of the issuance of an insurance policy for which all or a portion of a risk has been ceded to the reinsurer. However, the tax deferral advantage associated with expenditures of a reinsurer are already taken into account in the calculation of the policy reserves of the reinsurer.

Subsection 18.1(15) is, therefore, amended to exclude from the matchable expenditure rules expenditures of a reinsurer in respect of commissions or other expenses related to issuance of an insurance policy for which all or a portion of a risk is ceded to the reinsurer. This exception applies only where the reinsurer and the person to whom the reinsurer made the expenditures are both insurers subject to the supervision of the Superintendent of Financial Institutions (in the case where the reinsurer is required by law to report to the Superintendent of Financial Institutions) or, in any other case, the Superintendent of Insurance or similar officer or authority of the province under whose laws the insurer was incorporated.

This amendment applies to expenditures made after November 17, 1996, the original coming-into-force date for section 18.1.

Clause 8

Income from Business or Property – Deductions

ITA

20

Section 20 of the Act provides rules relating to the deductibility of certain outlays, expenses and other amounts in computing a taxpayer's income for a taxation year from a business or property.

ITA

20(1)(e)

Paragraph 20(1)(e) of the Act provides for the deduction over a five-year period of expenses incurred in the course of issuing securities, borrowing money, and certain other financing transactions. Amounts paid in respect of the principal of a debt obligation and interest on the obligation are expressly excluded from the application of this paragraph. Paragraph 20(1)(e) is amended to clarify that it does not allow a deduction for profit participation and similar payments – that is, payments dependent on the use of or production from property, or computed by reference to revenue, profits, cash flow, commodity prices or any other similar criterion or by reference to dividend payments. Where such payments are compensation for the use of borrowed money or for the right to pay a debt over time, they would be excluded by the existing paragraph 20(1)(e) – either because they are interest or because they fall within the broad definition of "principal amount" in subsection 248(1) of the Act. The amendment ensures that in no circumstances can participation and similar payments be deducted under paragraph 20(1)(e).

The amendment to paragraph 20(1)(e) applies with respect to expenses incurred by a taxpayer after Announcement Date, except where the expenses were incurred pursuant to a written agreement made by the taxpayer on or before that date.

Clause 9

Prescribed Federal Crown Corporations

ITA

27(2)

Section 27 of the Act provides special rules for the application of Part I to federal Crown corporations. It allows the Governor in Council to impose income tax on such corporations by prescribing them under the *Income Tax Regulations*. Subsection 27(2) provides that the tax exemption provided under paragraph 149(1)(d) of the Act does not apply to a corporation controlled by a prescribed federal Crown corporation. The amendment to subsection 27(2), which adds a reference to the tax exemptions provided under paragraphs 149(1)(d.1) to (d.4), is strictly consequential on the amendment to paragraph 149(1)(d) and the addition of paragraphs 149(1)(d.1) to (d.4) that were made applicable to taxation years and fiscal periods that begin after 1998.

This amendment applies to taxation years and fiscal periods that begin after 1998.

Clause 10

General Rules

ITA

40

Section 40 of the Act provides special rules for determining a taxpayer's capital gain or capital loss for a taxation year.

Limited Partner

ITA

40(3.14)

Subsection 40(3.14) of the Act provides an extended definition of "limited partner" for the purpose of determining whether a member's

interest in a partnership is subject to the negative adjusted cost base rule in subsection 40(3.1).

Paragraph 40(3.14)(a) provides that a member of a partnership is a "limited partner" if, by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (e.g., a limited partner of a limited partnership). Concern has been expressed that paragraph 40(3.14)(a) applies to a partner of a "limited liability partnership" in addition to a limited partner of a limited partnership. A limited liability partnership is a new type of partnership the form of which has only recently been permitted under some provincial statutes.

Unlike a limited partner of a limited partnership, a member of limited liability partnership can be liable for the general debts and obligations of a limited liability partnership. However, a member of a limited liability partnership is not liable for the debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions that another member of the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership.

Paragraph 40(3.14)(a) is amended to exclude from its application cases where a member's liability is limited by operation of a statutory provision of Canada or a province that limits the member's liability only for the debts, obligations and liabilities of a limited liability partnership, or any member of the partnership, arising from negligent acts or omissions that another member of the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business and while the partnership is a limited liability partnership.

This amendment applies after 1997.

Clause 11

Part Dispositions

ITA

43

Where a part of a capital property has been disposed of, section 43 of the Act provides for the allocation of a reasonable portion of the adjusted cost base ("ACB") of the property to that part. Section 43 of the Act is renumbered as subsection 43(1) as a consequence of the introduction of new subsection 43(2) of the Act.

The 1995 budget introduced enhanced incentives for the donation of ecologically sensitive land to the Government of Canada, a provincial government, a Canadian municipality or an approved registered charity established for the purpose of protecting Canada's environmental heritage. Donations from individuals are eligible for the charitable donations tax credit (section 118.1 of the Act), while those from corporations are eligible for deduction from income (section 110.1 of the Act). Besides transfers of title, landowners are able to donate covenants, easements and servitudes established under common law, the Civil Code in Quebec, or particular provincial or territorial legislation allowing for their establishment.

Normally the value of a donated property is determined to be the price that a purchaser would pay for the property on the open market. As there is no established market for covenants, easements and servitudes, the fair market value of such restrictions on land use is difficult to determine. To provide greater certainty in making these valuations, the 1997 budget introduced a measure to deem the value of these gifts to be not less than the resulting decrease in the value of the land. That measure was implemented with application to gifts made after February 27, 1995.

Like other capital property, the adjusted cost base (ACB) of a covenant, easement or servitude is also relevant in calculating the capital gain or loss that may arise on disposition. To provide taxpayers greater certainty in making this calculation, new subsection 43(2) ensures that a portion of the ACB of the land to which the covenant, easement or servitude relates is to be allocated to the donated covenant, easement or servitude. For this purpose, the

allocation of the ACB of the land to the gift is calculated in proportion to the percentage decrease in the value of the land as a result of the donation.

These amendments apply in respect of gifts made after February 27, 1995.

Clause 12

Exchanges of Property

ITA
44(1)

Section 44 of the Act allows a taxpayer to defer in certain circumstances the recognition of a capital gain in respect of property.

Subsection 44(1) of the Act allows a taxpayer who incurs a capital gain on the disposition of certain capital property to defer tax on the gain to the extent that the taxpayer reinvests the proceeds in a replacement property within a certain period of time.

Subsection 44(1) is amended to provide that the replacement property provisions do not apply to shares of the capital stock of a corporation.

These amendments apply to shares disposed of after April 15, 1999, subject to transitional relief for shares disposed of after that day as a consequence of a public takeover bid filed with a public authority before April 16, 1999.

Clause 13

Gain when Small Business Corporation Becomes Public

ITA
48.1(1)(a)(ii)

Section 48.1 of the Act allows the owner of qualified small business corporation shares to access the capital gains exemption under subsection 110.6(2.1) of the Act in respect of those shares when the

corporation lists its shares on a prescribed stock exchange in Canada or outside of Canada. The listing of the shares on a prescribed stock exchange results in the shares losing their status as qualified small business corporation shares. Such a shareholder may elect to be treated as having disposed of the shares immediately before the change in the corporation's status, in order to realize all or any part of any latent capital gain on the shares. The shareholder is then treated as having reacquired the shares at a cost equal to their deemed proceeds of disposition.

Subsection 48.1(1) is amended as a consequence of amendments to the definition of "Canadian-controlled private corporation" (CCPC) in subsection 125(7) of the Act. In order to be a small business corporation as defined in subsection 248(1) of the Act, a corporation must, among other things, be a CCPC. The amended definition of CCPC will, however, deny CCPC status to a corporation controlled by a Canadian resident corporation with shares listed on a prescribed stock exchange outside of Canada. Such a corporation will, therefore, no longer qualify as a small business corporation, and, in the absence of a rule allowing the shareholder to trigger a capital gain that had accrued before the change of the corporation's status, its shares would not be eligible for the capital gains exemption. Subparagraph 48.1(1)(a)(ii) of the Act is amended to ensure that the election under section 48.1 is available to realize a capital gain in such a case.

Not only will shareholders of subsidiaries controlled by corporations that have newly listed their shares on a prescribed foreign exchange qualify to make the election, but also those subsidiaries controlled by a corporation the shares of which were already listed on a prescribed foreign exchange on January 1, 2000, when the revised CCPC definition takes effect. If a subsidiary's parent corporation's shares were listed on that date, and the subsidiary was a small business corporation on December 31, 1999, an election under section 48.1 by an individual shareholder of the subsidiary will be treated as having been made in a timely manner provided it is made on or before the individual's filing-due date for the taxation year in which the Bill implementing this amendment receives Royal Assent.

Amended subparagraph 48.1(1)(a)(ii) applies to corporations that cease to be small business corporations after 1999.

Clause 14

Capital Gains and Losses – Definitions

ITA

54

"principal residence"

Section 54 of the Act defines a number of expressions for the purpose of subdivision c of Division B of Part I, which deals with taxable capital gains and allowable capital losses. The definition "principal residence" in section 54 provides criteria for the classification of a dwelling as the principal residence of a taxpayer for the purposes of the exemption of such property from capital gains taxation.

Under existing rules, a family unit may treat only one housing unit as its principal residence for a taxation year. For years before 1982, it was possible in the case of a married couple for each spouse to designate a principle residence for the purpose of capital gains exemption. However, as a result of an intervening amendment applicable to dispositions occurring after 1990, a strict interpretation of the definition would deny a taxpayer the benefit of the pre-1982 rules. This result is clearly unintended and the amendment reconfirms the benefit of the pre-1982 rules.

This amendment applies to dispositions that occur after 1990.

Clause 15

Avoidance

ITA

55

Section 55 of the Act deals with certain tax avoidance transactions.

Subsection 55(2) of the Act is an anti-avoidance provision directed against certain arrangements designed to use the inter-corporate dividend exemption to unduly reduce a capital gain on the sale of

shares. It treats the dividend in these situations either as proceeds from the sale of the shares or as a capital gain, and not as a dividend received by the corporation.

Subsection 55(3) of the Act sets out circumstances in which subsection 55(2) of the Act does not apply to dividends.

Paragraph 55(3)(b) provides an exemption from the application of subsection 55(2) for dividends received in the course of a reorganization (commonly referred to as divisive or butterfly reorganizations) in which a distribution is made by a distributing corporation to one or more transferee corporations. Because of the meaning of "distribution" in subsection 55(1), each transferee corporation must receive its pro rata share of each type of property owned by the distributing corporation immediately before the distribution.

As a result of the new definitions "specified corporation" and "specified wholly-owned corporation" in subsection 55(1) and new subsection 55(3.02) of the Act, the requirement that each transferee corporation must receive its pro rata share of each type of property owned by the distributing corporation on a butterfly reorganization will no longer apply in the case of certain public corporation butterflies. In particular, the type of property requirement will no longer apply for butterfly reorganizations of specified corporations that occur after 1998.

Definitions

ITA
55(1)

"specified corporation"

In order for a distributing corporation to qualify as a "specified corporation":

- 1) it must be a public corporation or specified wholly-owned corporation of a public corporation (specified wholly-owned corporation is a new expression and it is defined in subsection 55(1) of the Act);

- 2) shares of the distributing corporation must be exchanged for shares of another corporation (the "acquiror") in an exchange to which the definition "permitted exchange" in subsection 55(1) of the Act would apply if the definition "permitted exchange" were read without reference to paragraph (a) and subparagraph (b)(ii) thereof;
- 3) the distributing corporation must not make a distribution to a corporation other than the acquiror after 1998 and before the day that is three years after the day on which the distributing corporation shares were exchanged in a transaction referred to in 2) above; and
- 4) no acquiror in relation to the distributing corporation may make a distribution after 1998 and before the day that is three years after the day on which the distributing corporation shares were exchanged in a transaction referred to in 2) above.

Reading the definition of "permitted exchange" without reference to paragraph (a) and subparagraph (b)(ii) ensures that the exchange of shares of the capital stock of the distributing corporation for shares of the acquiror is effected in the course of what is commonly referred to a "spin-off" reorganization. In a spin-off reorganisation, property owned by the distributing corporation is transferred to a new corporation having the same shareholders as the distributing corporation.

The new definition of specified corporation also sets out the consequences of an amalgamation of corporations or a winding-up of a subsidiary corporation to which subsection 88(1) of the Act applies. Paragraph (e) of the definition provides that a corporation formed on an amalgamation is treated as a continuation of each of its predecessors. Paragraph (f) of the definition provides that, in the case of a winding-up of a subsidiary corporation into its parent to which subsection 88(1) of the Act applies, the parent corporation is treated as a continuation of the subsidiary.

"specified wholly-owned corporation"

The new definition of specified wholly-owned corporation of a public corporation is relevant for the purpose of the new definition "specified corporation". A specified wholly-owned corporation of a

public corporation means a corporation all of the outstanding shares of the capital stock of which (other than directors' qualifying shares and shares of a specified class) are held by a public corporation, a specified wholly-owned corporation or any combination of the two. The meaning of a specified class is set out in subsection 55(1) of the Act.

The new definitions of specified corporation and specified wholly-owned corporation apply to transfers of property that occur after 1998.

Distribution by a Specified Corporation

ITA

55(3.02)

New subsection 55(3.02) of the Act provides that where the distributing corporation is a "specified corporation", the definition "distribution" is to be read as if the reference to "each type of property" were read as "property" and the reference to "property of that type" were read as "property. These changes ensure that divisive reorganizations commonly known as "butterfly reorganizations" of specified corporations will be required only to effect a proportionate distribution of the overall property of the corporation undergoing the divisive reorganization rather than of each type of property. Subsection 55(3.02) of the Act applies to transfers of property that occur after 1998.

Applicable Rules

ITA

55(5)

Subsection 55(5) of the Act sets out rules applicable to section 55.

Subparagraph 55(5)(e)(iv) of the Act provides that in determining, for the purposes of section 55, whether persons are related to each other or whether control of a corporation has been acquired, persons will be treated as not being related to each other if they are related to each other only because of a right referred to in paragraph 251(5)(b) of the Act. Amended subparagraph 55(5)(e)(iv) provides that, for the purposes of determining, for the purposes of section 55, whether

persons are related to each other or whether control of a corporation has been acquired, the Act is to be read without reference to paragraph 251(5)(b) and section 251(3) of the Act. This will have the effect of ensuring that corporations will not be considered to be related to each other by reason only that they are each related to a third corporation.

New subparagraph 55(5)(e)(iv) of the Act applies to dividends received after Announcement Date other than dividends received as part of a series of transactions or events that were required, on or before Announcement Date, to be carried out pursuant to an agreement in writing made on or before that day.

Clause 16

Child Care Expenses

ITA
63(3)

"earned income"

Subsection 63(3) of the Act contains the definition "earned income" for the purpose of the child care expense deduction. In any year, an individual is allowed to deduct child care expenses of up to two thirds of the individual's earned income for that year. The amendment to the definition "earned income" is strictly consequential on the replacement of the volunteers' deduction under paragraph 8(1)(a) with an equivalent exemption under subsection 81(4). The amendment ensures that an individual is entitled to the same child care expense deduction as would have been available if the volunteer's exempt income had been required to be included in income. For information on the exemption, see the commentary on new subsection 81(4).

This amendment applies to the 1998 and subsequent taxation years.

Clause 17**Amounts not Included in Income**

ITA

81

Section 81 of the Act lists various amounts which are not included in computing a taxpayer's income.

Travel Expenses

ITA

81(3.1)

Subsection 81(3.1) of the Act excludes from income certain amounts received by a part-time employee in respect of travel expenses. In order to benefit from the exemption, the part-time employee is required to carry on a business or to have another employment. Since one of the purposes of this exemption is to facilitate the recruiting of part-time teachers by universities and other educational institutions located outside the major metropolitan areas, the amendment waives this particular requirement for individuals who are employed as professors or teachers by designated educational institutions. The term "designated educational institution", which is also used for the purposes of the tuition fee and education tax credits, is defined in subsection 118.6(1).

This amendment applies to the 1995 and subsequent taxation years.

Payments for Volunteer Services

ITA

81(4)

New subsection 81(4) of the Act provides for an exemption equivalent to the deduction available under paragraph 8(1)(a), which is being repealed. The exemption applies to the first \$1,000 of amounts received by an individual from a government, municipality or public authority for the performance, as a volunteer, of the individual's duties as an ambulance technician, a firefighter or a

person who assists in the search or rescue of individuals or in other emergency situations. The exemption is granted under the same conditions as was the deduction under paragraph 8(1)(a).

This amendment applies to the 1998 and subsequent taxation years.

Clause 18

Share for Share Exchange

ITA

85.1

Section 85.1 of the Act permits a tax-deferred rollover for shareholders who exchange shares of a taxable Canadian corporation for shares of a Canadian purchaser corporation in the course of an arm's length sale of the acquired corporation's shares. Subsection 85.1(1) provides, amongst other things, that the shareholder's tax cost of the old shares becomes the tax cost of the new shares with the result that any capital gain is deferred. If, however, the shareholder recognizes, in the shareholder's tax return for the year in which the exchange occurred, any portion of the gain or loss realized on the share exchange, subsection 85.1(1) provides that the rollover will not apply to the shares. Subsection 85.1(2) of the Act sets out other circumstances where the rollover will not be available. These include circumstances where the purchaser corporation and the shareholder are not dealing at arm's length immediately before the exchange or where the shareholder controls the purchaser immediately after the exchange.

New subsections 85.1(5) and (6) of the Act provide a similar tax-deferred rollover for shareholders who exchange shares of a foreign corporation for shares of another foreign corporation. The application of subsection 85.1(5) is subject to the rollover for foreign shares contained in subsection 85.1(3) and 95(2) of the Act.

New subsections 85.1(5) and (6) apply to foreign share-for-share exchanges that occur after 1995. Taxpayers may request a reassessment of their 1996, 1997 and 1998 taxation years in cases where they have disposed of foreign shares in the relevant year in circumstances in which subsections 85.1(5) and (6) of the Act may

apply to the disposition. These requests should be made in writing to the Canada Customs and Revenue Agency Tax Centre which serves the area in which the taxpayer lives.

Clause 19

Amalgamations

ITA

87

Section 87 of the Act provides rules that apply where there has been a merger of two or more corporations to form a new corporation.

Shares of Foreign Affiliate

ITA

87(2)(u)

Paragraph 87(2)(u) of the Act applies where two or more taxable Canadian corporations (referred to as "predecessor corporations") amalgamate to form a new corporation. Subparagraph 87(2)(u)(ii) provides that any dividend received by a predecessor corporation on a share that is an exempt dividend is considered for the purposes of subsection 93(2) to be an exempt dividend received by the new corporation. Subparagraph 87(2)(u)(ii) of the Act is amended to refer to subsections 93(2) to (2.3), effective after Announcement Date, to refer to new subsections 93(2) to (2.3) which limit the losses arising on the disposition of shares of a foreign affiliate.

Foreign Mergers

ITA

87(8) and (8.1)

Subsections 87(8) and (8.1) of the Act provide tax-deferred rollover treatment to a shareholder of a foreign corporation (a predecessor) in respect of a disposition of shares of the predecessor where the predecessor undergoes a merger with one or more other foreign corporations. It also provides a shareholder with a similar rollover in respect of the disposition of shares of the predecessor in the case of a

three-way or "triangular" foreign merger. The rollover is only available where the predecessor corporations, the new corporation formed on the merger and, in the case of a triangular merger, the corporation that controls the new corporation formed on the merger, are resident in the same foreign jurisdiction.

Subsections 87(8) and (8.1) are amended to remove the requirement that all of the corporations be resident in the same foreign jurisdiction. Consequently, the tax-deferred rollover will be available under subsection 87(8) in cases where the foreign corporations are resident in the same or different foreign jurisdictions.

New subsections 87(8) and (8.1) apply to mergers that occur after 1995. Where subsection 87(8) would otherwise apply to a taxpayer in respect of a merger that occurred in 1996, 1997 or 1998, the taxpayer can notify the Minister of National Revenue in writing, before the taxpayer's filing-due date for the taxation year in which subsections 87(8) and (8.1) receive Royal Assent, that the taxpayer elects not to have the subsection apply. Where the taxpayer so elects, the election will be considered to have been made in accordance with new subsection 87(8) of the Act.

Clause 20

Winding-up of a Corporation

ITA

88(1)

Section 88 of the Act deals with the tax consequences arising from the winding-up of a corporation. Subsection 88(1) provides rules that apply where a subsidiary has been wound up into its parent corporation where both corporations are taxable Canadian corporations and the parent owns at least 90% of the issued shares of each class of the subsidiary's capital stock.

ITA

88(1)(c)(vi)(B)(III)

Paragraph 88(1)(c) of the Act provides that the cost to a parent corporation of each property distributed to it on the winding-up of a

subsidiary is equal to the subsidiary's proceeds of disposition of the property plus, where the property is not an "ineligible property", an amount determined under paragraph 88(1)(d) of the Act in respect of the property. An ineligible property is defined in paragraph 88(1)(c) and consists of four types of property. Subparagraph 88(1)(c)(vi) describes the fourth type of ineligible property.

Subclause 88(1)(c)(vi)(B)(III) of the Act provides that property will be an ineligible property for the purposes of paragraph 88(1)(c) where the property distributed to the parent on the winding-up is acquired as part of the series of transactions or events that includes the winding-up by a person described in subclause 88(1)(c)(vi)(B)(III).

A person described in subclause 88(1)(c)(vi)(B)(III) of the Act is

- A. a corporation (other than a specified person) of which any person who was a specified shareholder of the subsidiary is a specified shareholder, or
- B. a corporation (other than a specified person) in which persons described in subclause 88(1)(c)(vi)(B)(II) owns shares that, if owned by one person, would have made that person a specified shareholder of the corporation.

Subclause 88(1)(c)(vi)(B)(III) of the Act is amended to also exclude from persons described therein the subsidiary itself. This amendment will ensure that where a target/subsidiary corporation transfers some of its property to a subsidiary of the target prior to the parent's acquisition of control of the target, the transfer, in and by itself, will not cause property distributed to the parent on the winding-up of the target/subsidiary to be ineligible property.

Amended subclause 88(1)(c)(vi)(B)(III) applies to windings-up that begin after November 1994.

ITA

88(1)(c.2)(iii)(A)

Subparagraph 88(1)(c.2)(iii) of the Act provides, for the purposes of paragraph 88(1)(c.2) and subparagraph 88(1)(c)(vi) of the Act, that an expanded definition of "specified shareholder" in subsection 248(1) of the Act is to be used. In particular, clause 88(1)(c.2)(iii)(A) provides

that the definition of specified shareholder is to be read as including a reference to "or of any other corporation that is related to the corporation and that has a significant direct or indirect interest in any issued shares of any class of the capital stock of the corporation" rather than the reference to "or of any corporation that is related to the corporation".

Amended clause 88(1)(c.2)(iii)(A) provides for a new modification to the expanded definition "specified shareholder" in subsection 248(1) of the Act. In particular, for the purposes of paragraph 88(1)(c.2) and subparagraph 88(1)(c)(vi), the definition of specified shareholder is to be read as including a reference to "the issued shares of any class (other than a specified class) of the capital stock of the corporation or of any other corporation that is related to the corporation and that has a significant direct or indirect interest in any issued shares of any class of the capital stock of the corporation" rather than the reference to "or of any corporation that is related to the corporation". Proposed clause 88(1)(c.2)(iii)(A) ensures that in determining whether a person is a specified shareholder of a particular corporation, for the purposes of paragraph 88(1)(c.2) and subparagraph 88(1)(c)(vi), the person does not have to account for shares of a specified class. Specified class is a new expression and is defined in new paragraph 88(1)(c.8) of the Act.

Amended clause 88(1)(c.2)(iii)(A) applies to windings-up that begin after November 1994.

ITA

88(1)(c.8)

New paragraph 88(1)(c.8) of the Act is relevant in determining whether a person is a specified shareholder for the purposes of a divisive reorganization commonly known as a "backdoor butterfly" described in subparagraph 88(1)(c)(vi) of the Act. (See the commentary on subclause 88(1)(c)(vi)(B)(III) of the Act re the significance of specified shareholder status.) Shares of a specified class are considered to be financing or debt-like shares and consequently need not be counted in determining whether a person is a specified shareholder of a corporation.

New paragraph 88(1)(c.8) provides that shares of the capital stock of a corporation will qualify as shares of a specified class where

- 1) the paid-up capital in respect of the class was not at any time less than the fair market value of the consideration for which the shares of that class then outstanding were issued;
- 2) the shares are non-voting in respect of the election of the Board of Directors of the corporation, except in the event of a failure or default under the terms or conditions of the shares;
- 3) the shares are not convertible into or exchangeable for any other shares (other than shares of a specified class) of the capital stock of the corporation; and
- 4) the holder of the share is not entitled to receive on the redemption, cancellation or acquisition of the share by the corporation or any person who does not deal at arm's length with the corporation, an amount (excluding any premium for early redemption) greater than the fair market value of the consideration for which the share was issued plus the amount of any unpaid dividends on the share.

New paragraph 88(1)(c.8) applies to windings-up that begin after November 1994.

Amalgamation Deemed not to be an Acquisition of Control

ITA
88(4)

Subsection 88(4) of the Act sets out for the purposes of paragraphs 88(1)(c), (d) and (d.2) the circumstances in which, among other things, a corporation formed on an amalgamation will be considered to be a continuation of its predecessor corporations. Subsection 88(4) is amended to also apply for the purpose of paragraph 88(1)(c.2), and for greater certainty, subsection 88(4) is amended to clarify that it also applies for the purposes of paragraphs 88(1)(c.3) to (c.8) and (d.3) of the Act.

These amendments apply to windings-up that begin after November 1994.

Clause 21

Definition – Capital Dividend Account

ITA
89(1)

"capital dividend account"

Subsection 89(1) defines certain terms that apply to corporations and their shareholders.

Clause (a)(i)(A) of the definition "capital dividend account" is amended to add a bracket that was omitted when the provision was amended by S.C. 1998, c. 19, ss. 17(1) [formerly Bill C-28].

The current amendment applies to dispositions made after December 8, 1997, other than a disposition made under a written agreement made before December 9, 1997 – the same coming-into-force provision as the 1998 amendment.

Clause 22

ITA
91

Amounts to be Included in Respect of Share of a Foreign Affiliate

Section 91 of the Act sets out rules for determining amounts that a taxpayer resident in Canada is to include in computing its income for a particular year as income from a share of a controlled foreign affiliate of the taxpayer.

Where Share Acquired by a Partnership

ITA
91(7)

New subsection 91(7) of the Act applies where a taxpayer that is a taxable Canadian corporation acquires a share of the capital stock of a

corporation that is, immediately after the acquisition, a foreign affiliate of the taxpayer, from a partnership of which the taxpayer or a corporation resident in Canada with which the taxpayer was not dealing at arm's length at the time the share was acquired was a member (the "member"). Where, after the acquisition, the taxpayer receives a dividend on such a share out of the foreign affiliate's taxable surplus, subsection 91(7) allows the taxpayer to make a deduction under subsection 91(5) of the Act in respect of the net foreign accrual property income in respect of the share that was previously included in the income of the member from the partnership from which the taxpayer acquired the share. Subsection 91(7) allows the deduction under subsection 91(5) by deeming the taxpayer's adjusted cost base of the share to have been adjusted under subsection 92(1) of the Act by the member's share of any additions to, or deductions from, the adjusted cost base of the share to the partnership under subsection 92(1).

New paragraph 91(7)(a) provides that the member's share of the increase to the partnership's adjusted cost base of the share is the amount included in the member's income under subsection 96(1) in respect of the affiliate's foreign accrual property income included in the partnership's income under subsections 91(1) or (3) of the Act. New paragraph 91(7)(b) provides that the member's share of the decrease to the partnership's adjusted cost base of the share is the amount by which the member's share of the partnership's income determined under subsection 96(1) decreased as a result of an amount deducted in computing the partnership's income under subsections 91(2), (4) or (5) of the Act.

New subsection 91(7) applies to shares acquired after Announcement Date.

Clause 23

Adjusted Cost Base of Share of Foreign Affiliate

ITA
92

Section 92 of the Act provides for adjustments to be made to the adjusted cost base of a share in a foreign affiliate with respect to

certain amounts included or deducted in computing income of the owner of the share.

Disposition of a Partnership Interest

ITA
92(4)

New subsection 92(4) of the Act applies where a member of a partnership that is a corporation resident in Canada or a foreign affiliate of a corporation resident in Canada disposes of all or any portion of its interest in the partnership. New subsection 92(4) ensures that prior dividends received by the partnership out of the affiliate's pre-acquisition surplus, to the extent that they exceed related foreign withholding taxes, are included in calculating the member's proceeds of disposition on the partnership interest. Subsection 92(4) increases the member's proceeds of disposition by the amount that was deductible (or would have been deductible if it were a corporation resident in Canada) by the member under paragraph 113(1)(d) of the Act net of foreign withholding taxes. The amount added to the member's proceeds does not include amounts previously added under this subsection, or amounts that were previously deemed to be a gain under new subsection 92(5) of the Act. Where the member does not dispose of all of its interests in the partnership, the deemed proceeds under new subsection 92(4) are reduced in proportion to the interests that were retained.

New subsection 92(4) applies to dispositions that occur after Announcement Date.

ITA
92(5) and (6)

Deemed Gain from the Disposition of a Share

New subsections 92(5) and (6) of the Act apply where a partnership disposes of a share of corporation. Where a corporation resident in Canada or a foreign affiliate of a corporation resident in Canada is a member of the partnership (the "member"), new subsections 92(5) and (6) treat the member as having a gain on the disposition of the share equal to the amount that was deductible (or would have been deductible by the member if it were a corporation resident in Canada)

by the member under paragraph 113(1)(d) of the Act in respect of dividends (net of foreign withholding taxes) received by the partnership on the share that were paid out of pre-acquisition surplus. The gain in this subsection is reduced by any amount that was added to the member's proceeds of disposition of a partnership interest under subsection 92(4).

New subsections 92(5) and (6) apply to dispositions that occur after Announcement Date.

Clause 24

Disposition of Shares in a Foreign Affiliate

ITA

93

Section 93 of the Act contains a number of rules relating to the disposition of shares of a foreign affiliate of a taxpayer resident in Canada.

Election re Disposition of Share in Foreign Affiliate

ITA

93(1)

Subsection 93(1) of the Act permits a corporation resident in Canada that disposes of a share of a foreign affiliate of the corporation to treat the proceeds of disposition of the share as a dividend.

In such circumstances, subparagraph 93(1)(b)(ii) provides that the foreign affiliate of the corporation will be considered to have redeemed shares of a class of its capital stock for the purposes of calculating certain of its surplus accounts in respect of the corporation. Subparagraph 93(1)(b)(ii) is amended to clarify that those accounts take their meaning from those meanings assigned for the purpose of Part LIX of the Regulations. New subparagraph 93(1)(b)(ii) applies to dispositions that occur after Announcement Date.

Disposition of a Share of a Foreign Affiliate Held by a Partnership

ITA

93(1.2)

New subsection 93(1.2) of the Act provides that, where a particular corporation resident in Canada or a foreign affiliate of the particular corporation (referred to as "disposing corporation") would, but for this subsection, have a taxable capital gain from a partnership from the disposition by the partnership of a share of a foreign affiliate of the corporation, and the particular corporation elects in prescribed manner in respect of the gain, the amount designated will reduce the taxable capital gain and will be grossed-up and recharacterized as a dividend received on the share by the disposing corporation.

New paragraph 93(1.2)(a) provides that $\frac{4}{3}$ of the amount designated by the particular corporation in respect of the share (the amount designated cannot exceed the disposing corporation's taxable capital gain), or where proposed subsection 93(1.3) applies $\frac{4}{3}$ of the amount determined under that subsection, will be treated as a dividend received on the share by the disposing corporation from the foreign affiliate.

New paragraph 93(1.2)(b) provides that, notwithstanding section 96, the disposing corporation's taxable capital gain from the disposition of the share is considered to be the amount by which the disposing corporation's taxable capital gain from the disposition of the share otherwise determined exceeds the amount designated by the particular corporation.

New paragraph 93(1.2)(c) provides that, for the purpose of any regulation made under subsection 93(1.2), the disposing corporation is treated as having disposed of the share and to have had a capital gain from the disposition equal to $\frac{4}{3}$ of the disposing corporation's taxable capital gain.

New paragraph 93(1.2)(d) provides that, for the purpose of section 113 in respect of the dividend referred to in new paragraph 93(1.2)(a), the disposing corporation is considered to have owned the share on which the dividend is paid.

New paragraph 93(1.2)(e) provides that, where the disposing corporation has a taxable capital gain from the disposition of the share because of the application of subsection 40(3) of the Act to the partnership in respect of the share, the partnership is treated for the purposes of this subsection as having disposed of the share.

This subsection applies to dispositions that occur after Announcement Date.

Deemed Election

ITA

93(1.3)

New subsection 93(1.3) of the Act provides that, where a foreign affiliate of a particular corporation resident in Canada has a gain from the disposition by a partnership of a share of a foreign affiliate of the particular corporation and the share is excluded property, the particular corporation will be treated as having made the election under new subsection 93(1.2) and to have designated the prescribed amount.

This subsection applies to dispositions that occur after Announcement Date.

Loss Limitation on Disposition of Share

ITA

93(2)

Subsection 93(2) of the Act is an anti-avoidance rule. It reduces a loss arising on a disposition of a share of the capital stock of a foreign affiliate of a corporation resident in Canada by exempt dividends received on the share before the disposition. The rule applies to the corporation resident in Canada and any foreign affiliate of such a corporation in respect of a share of a foreign affiliate of the corporation resident in Canada.

Subsection 93(2) of the Act is repealed and replaced by new subsections 93(2) to (2.3) of the Act because of the introduction of new section 93.1 of the Act.

Subsection 93(2) of the Act applies where a corporation resident in Canada or a foreign affiliate of such a corporation has a loss from the disposition of a share of a foreign affiliate of the corporation resident in Canada. Where the foreign affiliate has the loss from the disposition of a share of another foreign affiliate of the taxpayer, the rule does not apply where that affiliate share is excluded property of the disposing affiliate.

Where the rule applies, the loss arising on the disposition of the affiliate share is reduced by the exempt dividends received on the share by the particular corporation resident in Canada, a foreign affiliate of the particular corporation, another corporation related to the particular corporation or a foreign affiliate of a corporation resident in Canada that is related to the particular corporation, to the extent that those exempt dividends have not already reduced a capital loss or an allowable capital loss under subsections 93(2) to 93(2.3) arising on other dispositions of property. The term "exempt dividend" is defined in subsection 93(3) of the Act and is modified consequential on the introduction of section 93.1 of the Act.

New subsection 93(2) applies to dispositions that occur after Announcement Date.

Loss Limitations – Disposition of Share by Partnership

ITA

93(2.1)

New subsection 93(2.1) of the Act applies where a corporation resident in Canada or a foreign affiliate of such a corporation has an allowable capital loss from a partnership arising on the disposition by the partnership of a share of a foreign affiliate of the corporation resident in Canada. Where the foreign affiliate has the allowable capital loss, the rule does not apply where that affiliate share would be excluded property of the disposing affiliate if the affiliate owned the share.

Where the rule applies, the allowable capital loss from the partnership arising on the disposition of the affiliate share is reduced by $\frac{3}{4}$ of the exempt dividends received on the share by the particular corporation resident in Canada, a foreign affiliate of the particular corporation, another corporation related to the particular corporation

or a foreign affiliate of a corporation resident in Canada that is related to the particular corporation, to the extent that those exempt dividends have not already reduced a capital loss or an allowable capital loss under subsections 93(2) to 93(2.3) arising on other dispositions of property. The term "exempt dividend" is defined in subsection 93(3) of the Act and is modified consequential on the introduction of section 93.1 of the Act.

New subsection 93(2.1) applies to dispositions that occur after Announcement Date.

Loss Limitations – Disposition of Partnership Interest

ITA

93(2.2)

New subsection 93(2.2) of the Act applies where a corporation resident in Canada or a foreign affiliate of such a corporation has a loss on the disposition of an interest in a partnership that has a direct or indirect interest in shares of a foreign affiliate of the corporation resident in Canada. Where the foreign affiliate has the loss, the rule does not apply where those affiliate shares in which the partnership has an interest would be excluded property of the affiliate with the loss if the affiliate owned them immediately before the disposition.

Where the rule applies, the loss arising on the disposition of the partnership interest is reduced by the exempt dividends received before the disposition on the affiliate shares (in which the partnership has the interest) by the particular corporation resident in Canada, a foreign affiliate of the particular corporation, another corporation related to the particular corporation or a foreign affiliate of a corporation resident in Canada that is related to the particular corporation, to the extent that those exempt dividends have not already reduced a capital loss or an allowable capital loss under subsections 93(2) to 93(2.3) arising on other dispositions of property. The term exempt dividend is defined in subsection 93(3) of the Act and is modified consequential on the introduction of section 93.1 of the Act.

New subsection 93(2.2) applies to dispositions that occur after Announcement Date.

Loss Limitations – Disposition of Partnership Interest by a Partnership

ITA

93(2.3)

New subsection 93(2.3) of the Act applies where a corporation resident in Canada or a foreign affiliate of such a corporation has an allowable capital loss from a partnership arising on the disposition of an interest in a partnership where that partnership (the interest in which is disposed of) has a direct or indirect interest in shares of a foreign affiliate of the corporation resident in Canada. Where the foreign affiliate has the allowable capital loss, the rule does not apply where the affiliate shares in which the partnership (the interest in which was disposed of) has the interest would be excluded property of the affiliate (with the allowable capital loss) if the affiliate had owned the shares.

Where the rule applies, the allowable capital loss from the partnership arising on the disposition of an interest in another partnership which has a direct or indirect interest in the affiliate shares is reduced by $\frac{3}{4}$ of the exempt dividends received on the affiliate shares before the time of the disposition by the particular corporation resident in Canada, a foreign affiliate of the particular corporation, another corporation related to the particular corporation or a foreign affiliate of a corporation resident in Canada that is related to the particular corporation, to the extent that those exempt dividends have not already reduced a capital loss or an allowable capital loss under subsections 93(2) to 93(2.3) arising on other dispositions of property. The term exempt dividend is defined in subsection 93(3) of the Act and is modified consequential on the introduction of section 93.1 of the Act.

New subsection 93(2.3) applies to dispositions that occur after Announcement Date.

Exempt Dividends

ITA

93(3)

Subsection 93(3) of the Act defines the term "exempt dividend" for the purpose of subsection 93(2) of the Act. A dividend received by a Canadian corporation is an exempt dividend to the extent it is deductible under paragraphs 113(1)(a), (b) or (c) of the Act. A dividend received by a foreign affiliate of a Canadian corporation is an exempt dividend to the extent that the portion of the dividend that was not paid out of pre-acquisition surplus exceeds the income or profits tax paid by the affiliate.

Subsection 93(3) is amended to also apply for the purposes of new subsections 93(2.1) to (2.3) of the Act. In addition, the subsection is amended to apply in respect of shares of foreign affiliates that are owed by partnerships. For information on the treatment of foreign affiliate shares owned by partnerships, see the commentary on new section 93.1.

The amendment to subsection 93(3) applies to dispositions that occur after Announcement Date.

Clause 25

Shares Held by a Partnership

ITA

93.1(1)

New subsection 93.1(1) of the Act applies for the purpose of determining whether a non-resident corporation is a foreign affiliate of a corporation resident in Canada for the purposes of new subsection 93.1(2), sections 93 and 113 and any regulations made under those sections, and the rules in section 95 that are required to be applied to a foreign affiliate of a corporation resident in Canada in applying sections 93 and 113 of the Act.

For this purpose, new subsection 93.1(1) deems a member of a partnership to own its proportionate number of shares of a

corporation held by a partnership. The number of shares owned by a member at any particular time is equal to the proportion of the total number of shares owned by the partnership that the fair market value of the member's interest in the partnership at that time is of the fair market value of all members' interests in the partnership at that time.

Subsection 93.1(1) applies to dividends received after Announcement Date.

Where Dividends Received by a Partnership

ITA

93.1(2)

New subsection 93.1(2) of the Act applies where a partnership receives a dividend from a foreign affiliate of the corporation resident in Canada.

Paragraph 93.1(2)(a) provides that, for the purposes of sections 93 and 113 and the regulations made thereunder, a member of a partnership is treated as having received its proportionate share of a dividend received by the partnership from a foreign affiliate of the member. The proportionate share is determined as that portion of the partnership dividend that the fair market value of the member's interest in the partnership is of the fair market value of all members' interests in the partnership.

Paragraph 93.1(2)(b) provides that, for the purposes of sections 93 and 113 and the regulations made thereunder, a dividend that is treated as having been received by a member of a partnership under paragraph 93.1(2)(a) is treated as having been received in equal proportions on each affiliate share held by the partnership at that time.

Paragraph 93.1(2)(c) provides that, for the purpose of section 113, each affiliate share referred to in paragraph 93.1(2)(b) is treated as having been owned by the each member of the partnership.

Subparagraph 93.1(2)(d)(i) provides that, despite paragraphs 93.1(2)(a), (b) and (c), where a member of the partnership is a corporation resident in Canada, the member is restricted in its deductions under section 113 to the amount included in its income

under subsection 96(1) on account of the dividend received by the partnership.

Subparagraph 93.1(2)(d)(ii) provides that, despite paragraphs 93.1(2)(a), (b) and (c), where the member is another foreign affiliate of the corporation resident in Canada, the amount included in the other affiliate's income in respect of the dividend referred to in paragraph 93.1(2)(a) shall not exceed the amount that would have been included in the other affiliate's income under subsection 96(1) if the determination for H in the formula in the definition "foreign accrual property income" in subsection 95(1) were nil and the Act were read without reference to subsection 93.1(2).

Subsection 93.1(2) applies to dividends received after Announcement Date.

Clause 26

Foreign Accrual Property Income

ITA

95

Section 95 of the Act defines a number of terms and provides certain rules that apply for the purposes of subdivision i of Division B in Part I of the Act, which relates to shareholders of non-resident corporations.

Definitions

ITA

95(1)

"foreign accrual property income"

The description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act and section 5903 of the Regulations establish the extent to which a foreign affiliate of a taxpayer is permitted to deduct amounts in computing its foreign accrual property income for the year in respect of foreign accrual

property losses of other taxation years. Under the existing provisions such losses may be carried forward for five years.

The amendments to the description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act and section 5903 of the Regulations provide that foreign accrual property losses may be carried back three years and forward seven years. The amendments apply to taxation years of a foreign affiliate that begin after Announcement Date.

The amendment to the definition of "foreign accrual property income" in subsection 95(1) of the Act adds new description H to the formula in that definition. The description of H applies where the affiliate was a member of a partnership that received a dividend from another foreign affiliate of the taxpayer. In such a case, the amount for the description of H is equal to the portion of such dividend received by the partnership that is included in the description of A in the formula in respect of the affiliate for the year that is deemed by paragraph 93.1(2)(a) of the Act to have been a dividend received by the member affiliate from another foreign affiliate of the taxpayer. New description H ensures that inter-affiliate dividends are not included in foreign accrual property income of an affiliate of the taxpayer.

The amendment to the definition of "foreign accrual property income" in subsection 95(1) is applicable after Announcement Date.

Certain Foreign Currency Gains and Losses of a Foreign Affiliate

ITA

95(2)(g) and (h)

Paragraph 95(2)(g) provides that foreign currency gains or losses realized on the settlement of debts owing between foreign affiliates or between a foreign affiliate and a non-arm's length non-resident corporation are ignored for the purpose of determining foreign accrual property income ("FAPI"). Similarly, paragraph 95(2)(h) allows foreign currency gains or losses to be ignored for the purpose of determining FAPI when realized by a foreign affiliate as a result of the redemption, cancellation or acquisition of shares of, or on the reduction of capital of, another foreign affiliate of the taxpayer. Paragraph 95(2)(h) also allows foreign currency gains or losses to be

ignored when realized on a non-arm's length sale of shares of another affiliate.

The amendment to paragraph 95(2)(g) incorporates the provisions of paragraphs 95(2)(g) and (h) into one paragraph. Also, the amendment allows paragraph 95(2)(g) to apply regardless of whether the foreign currency gains or losses are incurred on income or capital account. As well, paragraph 95(2)(g) applies in circumstances where the foreign affiliate redeems, cancels or acquires its own shares. Paragraph 95(2)(g) will not apply where the gain or loss is incurred on a "mark-to-market property" or a "specified debt obligation" as defined in subsection 142.2(1). In light of the foreign corporate group concept adopted in paragraph 95(2)(a) as part of the 1994 budget amendments, the relief in paragraph 95(2)(g) is restricted to circumstances where the taxpayer resident in Canada has a qualifying interest in each relevant foreign affiliate. In addition, each qualified non-resident corporation must be a corporation that is related to the taxpayer and the affiliate benefiting from the relief of paragraph 95(2)(g).

Amendment paragraph 95(2)(g) applies to taxation years of a foreign affiliate that begin after Announcement Date. However, if the taxpayer so elects and notifies the Minister of National Revenue in writing before 2001 of its election, paragraph 95(2)(g) applies to all its foreign affiliates' taxation years that begin after 1994.

Rule for Subsection (2)

ITA

95(2.2)

Subsection 95(2.2) of the Act provides rules for the purpose of paragraph 95(2)(a) of the Act. The subsection provides that in certain circumstances a non-resident corporation that was not a foreign affiliate of a taxpayer will be considered to be a foreign affiliate of the taxpayer. It also provides that in certain circumstances a non-resident corporation that was not related to a foreign affiliate of a taxpayer will be considered to be related to the foreign affiliate and the taxpayer.

Subsection 95(2.2) is amended to apply to all of subsection 95(2), rather than merely paragraph 95(2)(a). This amendment ensures that

subsection 95(2.2) will apply to the changes in paragraph 95(2)(g) of the Act and has the same effective date as those changes.

Where Rights or Shares are Issued, Acquired or Disposed of to Avoid Tax

ITA
95(6)

Subsection 95(6) of the Act is an anti-avoidance rule that prevents the avoidance of tax through the use of rights to acquire shares or the issuance of shares. The amendments to this subsection clarify that the subsection is intended to prevent the avoidance of tax through the use of rights to acquire partnership interests or the issuance of partnership interests. Where applicable, paragraph 95(6)(b) treats an acquisition or disposition of shares or partnership interests to have not taken place. Where the shares or partnership interests were previously unissued, the paragraph deems the shares or partnership interests to have not been issued.

The amendments to subsection 95(6) are applicable after Announcement Date.

Clause 27

Limited Partner

ITA
96(2.4)

Subsection 96(2.4) of the Act provides an extended definition of "limited partner" that is relevant for the purpose of applying the restrictions on partnership tax credits and losses.

Paragraph 96(2.4)(a) provides that a member of a partnership is a "limited partner" if, by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited. Concern has been expressed that paragraph 96(2.4)(a) applies to a partner of a "limited liability partnership" in addition to a limited partner of a limited partnership. A limited

liability partnership is a new type of partnership the form of which has only recently been permitted under some provincial statutes.

Unlike a limited partner of a limited partnership, a member of limited liability partnership can be liable for the general debts and obligations of a limited liability partnership. However, a member of a limited liability partnership is not liable for the debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions that another member of the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership.

Paragraph 96(2.4)(a) is amended to exclude from its application cases where a member's liability is limited by operation of a statutory provision of Canada or a province that limits the member's liability only for the debts, obligations and liabilities of a limited liability partnership, or any member of the partnership, arising from negligent acts or omissions that another member of the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership.

This amendment applies after 1997.

Clause 28

Beneficiaries' Taxable Capital Gain

ITA

104(21.2)

Subsection 104(21.2) of the Act sets out the rules for allocating the net taxable capital gains of a trust to its beneficiaries for the purpose of section 110.6 of the Act. Personal trusts are the only trusts that can make designations of net taxable capital gains to beneficiaries. Subsection 104(21.2) is amended to provide that such designations can also be made by a trust described in subsection 7(2) of the Act. In general, those are trusts of which the trustee holds shares in trust for an employee and the employee is treated for the purposes of paragraphs 110(1)(d) and (d.1) of the Act as having acquired and

disposed of the shares at the time that the trust acquired and disposed of them. This amendment ensures that a trust described in subsection 7(2) will be able to designate its net taxable capital gains arising from a disposition of "qualified farm property" or "qualified small business corporation shares" to its beneficiaries. New subsection 104(21.2) of the Act applies to trust taxation years that begin after February 22, 1994.

Clause 29

Taxable Income – Deductions

Section 110 of the Act provides various deductions that may be claimed in computing a taxpayer's income.

Employee Options

ITA
110(1)(d)

Under subsection 7(1) of the Act, an individual who acquires a share of a corporation or a unit of a mutual fund trust (a "security") under an employee security option agreement (or disposes of rights under such an agreement) may be treated as having received a benefit from employment. Where certain conditions are met, paragraph 110(1)(d) allows the individual to deduct 1/4 of the amount included in income as a result of the application of subsection 7(1).

Fair Market Value Test

One of the conditions to be eligible for the 1/4 deduction is that the amount payable under the option for the security (the "option price") not be less than the fair market value of the security at the time the option was granted. Paragraph 110(1)(d) provides for the option price to be determined without reference to changes in the value of a foreign currency relative to Canadian currency during the period from the time the option is granted to the time the security is acquired. This is to eliminate the effect of foreign exchange fluctuations.

Paragraph 110(1)(d) is amended so that changes in the value of a foreign currency at any time after the option is granted are

disregarded. This reflects the fact that, if there has been a disposition of rights rather than a security acquisition, the period described above is indeterminable.

Arm's Length Test

Another condition to be eligible for the $\frac{1}{4}$ deduction is that the individual be dealing at arm's length, immediately after the option is granted, with the entity that granted the option (the "grantor") and with each entity not dealing at arm's length with the grantor. If the option under which the security is acquired (or rights are disposed of) was acquired as a result of one or more exchanges of options under subsection 7(1.4), the arm's length test must be satisfied after each such exchange but not after the granting of the original option.

The arm's length test is amended in two ways. First, the requirement that the individual be dealing at arm's length with any entity not dealing at arm's length with the grantor is replaced with a requirement that the individual be dealing at arm's length with his or her employer and with the entity whose securities can be acquired under the option. There is no change to the requirement that the individual be dealing at arm's length with the grantor. Second, it is amended so that, if there has been an exchange of options under subsection 7(1.4), the arm's length test is applied with respect to the original option and not with respect to any subsequent exchange of options.

These amendments apply to the 1998 and subsequent taxation years. They undo recent legislative changes that had the unintended effect of both tightening the arm's length test (extending it to all entities not dealing at arm's length with the grantor) and relaxing the test (ceasing to apply it to the original option after an exchange). They also further relax the arm's length test by restricting its application to the original option when there has been an exchange of options.

Clause 30

Charitable Donations Deduction

ITA

110.1

Section 110.1 of the Act provides for the deductibility in computing income of charitable donations and certain other gifts.

Gifts of Capital Property

ITA

110.1(3)

Subsection 110.1(3) of the Act provides that, if a corporation donates capital property to a charity, it may elect a value between the adjusted cost base and the fair market value of the donated property to be treated both as the proceeds of disposition for the purpose of calculating its capital gain and the amount of the gift for the purpose of the deduction allowed for charitable donations under subsection 110.1(1).

The amendment to subsection 110.1(3) is complimentary to the amendment of subsection 110.1(5) of the Act, which provides that the fair market value of a gift of a covenant, easement or servitude in respect of ecologically sensitive land will not be considered to be less than the decrease in value of the subject land that resulted from the making of the gift. The amendments clarify that a corporate donor may nevertheless report a reduced amount as proceeds of disposition of such a gift, where the value of the gift for the purpose of the charitable donations deduction is reduced accordingly. This amendment applies in respect of gifts made after February 27, 1995.

Ecological Gifts

ITA

110.1(5)

Subsection 110.1(5) of the Act provides that the fair market value of a gift of a covenant, easement or servitude in respect of ecologically

sensitive land will not be considered to be less than the decrease in value of the subject land that resulted from the making of the gift. Subsection 110.1(5) of the Act is amended to clarify that such amount will also be, subject to the designation of an amount under subsection 110.1(3), the corporate donor's proceeds of disposition for the purposes of calculating income and capital gains. New subsection 110.1(5) of the Act applies in respect of gifts made after February 27, 1995.

Clause 31

Deduction of Taxable Dividends Received by Corporation Resident in Canada

ITA

112

Section 112 of the Act deals with the treatment of dividends received by a corporation resident in Canada from another corporation.

Guaranteed Shares

ITA

112(2.2)

Subsection 112(2.2) of the Act denies the intercorporate dividend deduction for dividends on certain shares that are guaranteed by a specified financial institution. This subsection is amended by dividing its provisions among three new subsections – (2.2), (2.21) and (2.22) – in order to improve readability. In addition, a new exception is set out in new paragraph 112(2.21)(d), described below.

Amended subsection (2.2) sets out the basic conditions under which a share is considered to be a guaranteed share.

These amendments apply to dividends received after 1998.

Exceptions

ITA

112(2.21)

New subsection 112(2.21) of the Act sets out exceptions specifying shares to which the guaranteed share rule in amended subsection 112(2.2) does not apply. Paragraphs 112(2.21)(a) to (c) set out the exceptions formerly contained in paragraphs 112(2)(c) to (e).

Paragraph 112(2.21)(d) sets out a new exception for certain shares held within a corporate group. The exception applies where two general conditions are met. First, the shares must not have been acquired by the holder in the ordinary course of its business, and the guarantee agreement must not have been given in the ordinary course of business of the party that gave it. Second, the issuer of the share must be related to both the holder and the guarantor, otherwise than because of an option or other right referred to in paragraph 251(5)(b) of the Act.

This subsection applies to dividends received after 1998.

Interpretation

ITA

112(2.22)

New subsection 112(2.22) of the Act sets out rules of interpretation that apply to the guaranteed share rules in subsections (2.2) and (2.21). These provisions were formerly contained in paragraphs 112(2.2)(f) and (g). This new subsection applies to dividends received after 1998.

Clause 32**Personal Credits – In-home Care of Relative**

ITA

118(1)B(c.1)

Paragraph (c.1) of the description of B in section 118(1) of the Act provides a tax credit to an individual who provides in-home care for an adult relative. The relative in respect of whom the credit may be claimed has to be the individual's child, grandchild, parent, grandparent, brother, sister, aunt, uncle, nephew or niece. The paragraph is amended to also allow a taxpayer to claim the caregiver tax credit in respect of such relatives of the taxpayer's spouse.

This amendment applies to the 1998 and subsequent taxation years.

Clause 33**Charitable Donations Tax Credit**

ITA

118.1

Section 118.1 of the Act provides the tax credit that may be claimed by individuals who make charitable donations, gifts to the Crown and certain gifts of cultural property and ecologically sensitive land. Donors may carry forward unused claims for up to five years.

Gift in the Year of Death

ITA

118.1(4)

Subsection 118.1(4) of the Act treats a gift made in the year of an individual's death as having been made in the preceding year to the extent that it was not deducted in the year of death. The subsection is amended consequential to the amendment of subsections 118.1(7) and (7.1) of the Act, to clarify that it applies for the purposes of those subsections. For further information, see the commentary to those subsections.

This amendment generally applies to the 2000 and subsequent taxation years.

Gift of Capital Property

ITA

118.1(6)

Subsection 118.1(6) of the Act provides that, if an individual donates capital property to a charity, the individual may elect a value between the adjusted cost base and the fair market value of the donated property to be treated both as the proceeds of disposition for the purpose of calculating the individual's capital gain and the amount of the gift for the purpose of calculating the tax credit allowed for charitable donations under subsection 118.1(3) of the Act.

The amendment to subsection 118.1(6) of the Act is complementary to the amendment of subsection 118.1(12) of the Act, which provides that the fair market value of a gift of a covenant, easement or servitude in respect of ecologically sensitive land will not be considered to be less than the decrease in value of the subject land that resulted from the making of the gift. The amendments clarify that an individual donor may nevertheless report a reduced amount of proceeds of disposition of such a gift, where the value of the gift for the purpose of calculating the charitable donations tax credit is reduced accordingly. This amendment applies in respect of gifts made after February 27, 1995.

Gifts of Artists' Inventory

ITA

118.1(7) and (7.1)

Subsection 118.1(7) of the Act provides that, if an artist donates artwork created by the artist and held in inventory, the artist may designate a value between the cost amount and the fair market value of the artwork to be treated both as the proceeds of disposition for the purpose of calculating the individual's income and the amount of the gift for the purpose of calculating the tax credit allowed for charitable donations under subsection 118.1(3). Such an amount may also be designated by the legal representative of a deceased artist, where the artwork is donated according to the late individual's will.

If the artwork is cultural property, as described in subsection 118.1(1) of the Act, subsection 118.1(7.1) of the Act applies instead of subsection (7) of the Act. Under subsection 118.1(7.1), the individual is also treated as having received proceeds of disposition equal to the cost amount to the individual of the work of art for the purpose of calculating the individual's income, but the fair market value of the artwork is not affected. This means that the artist is entitled to a credit based on the value of the donation, but that the deceased artist recognizes neither a profit nor a loss on the disposition of the work of art in computing income from the artist's business for income tax purposes.

Subsections (7) and (7.1) of the Act are amended to provide that, where artwork is donated as a result of the death of the individual, the gift is deemed to have been made by the individual immediately before the individual's death. These amendments clarify that the proceeds of disposition calculated under these subsections are relevant for the purpose of calculating the income of the late individual in the year of death.

Subsections 118.1(7) and (7.1) of the Act are also amended to apply to artwork that has been donated by an individual who acquired the artwork in circumstances where subsection 70(3) of the Act applied (i.e. as a "right or thing").

Upon the death of an individual, subsections 69(1.1) and 70(3) of the Act provide (if applicable) a rollover of "rights or things" of the late individual to beneficiaries or other persons beneficially interested in the estate or trust of the late individual. That is, if artwork of a late individual is a "right or thing," income from the ultimate disposition of the artwork will be attributed to the beneficiary. (Note, however, that subsection 70(3) of the Act does not apply where the late individual's legal representative has validly filed a "rights or things" return or where the time for filing such a return has expired before the transfer of the artwork to the beneficiary).

New subsections 118.1(7) and (7.1) of the Act apply to such an individual beneficiary if that beneficiary donates the artwork to the same effect as if the artwork had been donated by the deceased person.

These amendments generally apply to the 2000 and subsequent taxation years.

Ecological Gifts

ITA

118.1(12)

Subsection 118.1(12) of the Act provides that the fair market value of a gift of a covenant, easement or servitude in respect of ecologically sensitive land will not be considered to be less than the decrease in value of the subject land that resulted from the making of the gift. Subsection 118.1(12) of the Act is amended to clarify that such amount will also be, subject to the designation of an amount under subsection 118.1(6), the donor's proceeds of disposition for the purposes of calculating income and capital gains. This amendment applies in respect of gifts made after February 27, 1995.

Clause 34

Education Tax Credit

ITA

118.6(2)

Section 118.6 of the Act provides a tax credit computed by reference to the number of months in a calendar year in which a student is enrolled in a qualified educational program at a designated educational institution. The expressions "qualified educational program" and "designated educational institution" are defined in subsection 118.6(1). Essentially, the education tax credit is granted to students enrolled in post-secondary and vocational job-training courses which qualify for the purposes of the tuition fee tax credit. In the case of vocational schools, fees paid on behalf of students who are under 16 years of age do not qualify for the tuition fee tax credit. The amendment clarifies that a similar restriction applies for the purposes of the education tax credit.

This amendment applies to the 1999 and subsequent taxation years.

Clause 35**Unused Tuition and Education Tax Credit**

ITA

118.61

Section 118.61 of the Act provides for the deduction of a student's carryforward of unused tuition and education tax credits, as calculated at the end of the previous year. The amendments to the description of C in subsection 118.6(1) and to paragraph 118.61(2)(b) make the calculation of the student's unused tuition and education tax credits compatible with the ordering provided under section 118.92 for the claiming of non-refundable credits. As provided under that section, the tuition fee and education tax credits, as well as the carryforward of the unused portion of those credits, must be claimed before any part of those credits can be transferred to a spouse or supporting individual and before claiming any donation or dividend tax credit.

These amendments apply to the 1999 and subsequent taxation years.

Clause 36**Small Business Deduction**

ITA

125(7)

"Canadian-controlled private corporation"

Section 125 of the Act provides for a corporate tax reduction (called the "small business deduction") in respect of income of a Canadian-controlled private corporation (CCPC) from an active business carried on by it in Canada.

Subsection 125(7) of the Act defines "Canadian-controlled private corporation", among other terms. This definition applies not only to the small business deduction under section 125 of the Act but also, through its incorporation by reference into subsection 248(1) of the Act, to the Act as a whole.

Currently, a corporation is a CCPC if it is a private corporation and a Canadian corporation (both of which terms are defined in subsection 89(1) of the Act), and it is not controlled, directly or indirectly in any manner whatever by one or any combination of public corporations (other than prescribed venture capital corporations) or non-resident persons. A corporation controlled by a group of non-residents or public corporations is not considered a CCPC if each share held by non-residents or public corporations, when attributed to a notional person, results in the notional person having control of the underlying corporation. Nor is a corporation a CCPC if it lists its stock on a prescribed stock exchange in Canada (Regulation 3200) or outside of Canada (Regulation 3201).

This amendment ensures that a corporation controlled by a Canadian resident corporation that lists its shares on a prescribed stock exchange outside of Canada is not a CCPC. This mirrors the treatment of corporations controlled by a Canadian resident corporation that lists its shares on a prescribed stock exchange in Canada (public corporation). Under the current definition these corporations are not CCPCs.

This amendment applies to taxation years beginning after 1999.

Clause 37

Canadian Film or Video Production Tax Credit

ITA

125.4(2)

Section 125.4 of the Act generally provides for a tax credit in respect of qualified labour expenditures incurred after 1994 by a qualified corporation for the production of a Canadian film or video production certified by the Minister of Canadian Heritage.

Paragraph 125.4(2)(a) of the Act is amended to clarify that qualified labour expenditures do not include an amount claimed as an expenditure in respect of Scientific Research and Experimental Development under section 37 of the Act.

This amendment applies after Announcement Date.

Clause 38

Film or Video Production Services Tax Credit

ITA

125.5(1)

"eligible production corporation"

The film or video production services tax credit is generally available in respect of qualifying Canadian labour expenditures of an "eligible production corporation" (as defined in subsection 125.5(1) of the Act) that carries on a business in Canada that is primarily a film or video production business or a production services business. An eligible production corporation does not include a corporation which is a tax-exempt entity, a corporation controlled by one or more tax-exempt entities or a prescribed labour-sponsored venture capital corporation.

The definition of "eligible production corporation" is amended to clarify that such corporations will not qualify as eligible production corporations if they are at any time in their taxation year such a corporation.

This amendment applies after Announcement Date.

Clause 39

Investment Tax Credit

ITA

127(9)

Subsection 127(9) of the Act provides definitions that are used in the provisions relating to the investment tax credit ("ITC").

"investment tax credit"

The definition "investment tax credit" was amended by S.C. 1998, c. 19, ss. 33(1) [formerly Bill C-28] to exclude expenditures in respect of which a taxpayer has not filed a prescribed form with

Revenue Canada within one year after the taxpayer's filing-due date for the taxation year in which the expenditure was incurred. That amendment, which applied to all taxation years, incorrectly replaced the reference to "income exempt from tax under this Part" in the former "post-amble" to the definition "investment tax credit" with the concept "exempt income". The phrase "income exempt from tax under this Part" excluded from the definition of "investment tax credit" amounts incurred by a person whose taxable income is exempt from tax, as well as income that is exempt income for the purpose of calculating income under section 3 of the Act. Paragraph (l) of the definition "investment tax credit" is amended to correct this oversight, applicable to all taxation years.

Clause 40

Private Corporations

ITA

129(3.1)

New subsection 129(3.1) revives a transitional rule previously contained in subsection 129(3.2). That transitional rule allowed a private corporation, other than a Canadian-controlled private corporation (CCPC), to include in its refundable dividend tax on hand (RDTOH) for taxation years commencing after November 12, 1981 certain income in respect of property disposed of by it before November 13, 1981. The rule was intended to allow certain private corporations that were not CCPCs to benefit for a transitional period from some aspects of the RDTOH scheme that became, after 1981, limited only to CCPCs.

The RDTOH computation rules were subsequently simplified for taxation years ending after June 1995. As part of this simplification process, subsection 129(3.2) was repealed on the assumption that it had fulfilled its transitional function. It has since been determined that, despite the passage of almost 14 years since the transitional provision was enacted, at least one taxpayer was still using subsection 129(3.2) in 1995. The rule is therefore being revived for taxation years ending after June 1995 and before 2003, in order to give adequate opportunity for this and any other taxpayers who may be relying on the rule to adjust to the 1981 RDTOH provisions.

New subsection 129(3.1) applies to taxation years that end after June 1995 and before 2003.

Clause 41

Insurance Corporations

ITA

138

Section 138 of the Act sets out detailed rules relating to the taxation of insurance corporations.

Deductions not Allowed

ITA

138(5)(b)(i)

Currently, interest on borrowed money used to acquire designated insurance property for a year may be deducted by an insurer in respect of its insurance business. Interest on borrowed money used to acquire property other than designated insurance property is not deductible. Subparagraph 138(5)(b)(i) is amended to allow interest on borrowed money used to acquire property for which designated insurance property is substituted property to be deducted. As well, the deduction is limited to the interest that relates to the period in the year during which the designated insurance property was held by the insurer.

This amendment applies to the 1997 and subsequent taxation years.

ITA

138(5)(b)(iv)

Paragraph 138(5)(b) of the Act limits the deductibility of interest by resident multinational life insurers and non-resident insurers to those amounts set forth in subparagraphs 138(5)(b)(i) to (iv). Subparagraph 138(5)(b)(iv) was added to the Act to permit a deduction up to a prescribed amount that was to have been set out in regulation 2404 proposed as part of the draft Regulations for insurance companies that were published in September 1997. Changes made to the draft

Regulations since their release have eliminated the need for subparagraph 138(5)(b)(iv). Subparagraph 138(5)(b)(iv) is, therefore, repealed. This amendment applies to the 1997 and subsequent taxation years.

Deemed Disposition

ITA

138(11.3)

Subsection 138(11.3) of the Act provides for a deemed disposition and reacquisition of property owned by a resident multinational life insurer or a non-resident insurer where property either becomes designated insurance property or ceases to be designated insurance property of the insurer. The purpose of the subsection is to ensure that gains and losses from property accruing while property is designated insurance property are included in computing the insurer's income from carrying on an insurance business in Canada.

New paragraphs 138(11.3)(d) and (e) ensure that only gains and losses accruing while property is designated insurance property are included in computing an insurer's income.

This amendment applies to the 1997 and subsequent taxation years.

Transfer of Insurance Business by Non-resident Insurer

ITA

138(11.5)(b)

Subsection 138(11.5) of the Act sets out the rules that allow a non-resident insurer to transfer, on a tax-deferred basis, an insurance business carried on in Canada to a qualified related corporation. This provision is elective and, in order to be entitled to elect the rollover treatment, the conditions set out in paragraphs 138(11.5)(a) to (d) must be met. Paragraph 138(11.5)(b) requires that the transferor transfer all or substantially all of the property used or held by it in its insurance business in Canada to a qualified related corporation that commences to carry on that insurance business in Canada. The amendment to paragraph 138(11.5)(b) is consequential on the definition "designated insurance property" being added to subsection 138(12) and requires that the transferor transfer all or

substantially all of its designated insurance property for the year to a corporation that is a qualified related corporation that commences to carry on that insurance business in Canada.

This amendment applies to the 1997 and subsequent taxation years.

Computation of Income of Non-resident Insurer

ITA

138(11.91)(e)

Subsection 138(11.91) provides rules for the purpose of computing the income of a non-resident insurer that commences to carry on an insurance business in Canada at any time in a particular taxation year or that ceases to be exempt from tax under Part I in a particular taxation year. Paragraph 138(11.91)(e) deems an insurer to have disposed, immediately before the beginning of the particular taxation year, of each property used or held by it in the course of carrying on an insurance business in Canada in the year, at its fair market value and to have reacquired it at that time at that fair market value. Paragraph 138(11.91)(e) ensures that non-resident insurers will report the appropriate amount of gain or loss from the disposition of property used in carrying on an insurance business in Canada. Paragraph 138(11.91)(e) now makes reference to property that is designated insurance property. The amendment is consequential to the addition in subsection 138(12) of the definition "designated insurance property", applicable to the 1997 and subsequent taxation years.

This amendment applies to the 1997 and subsequent taxation years.

Transfer of Insurance Business by Resident Insurer

ITA

138(11.94)(b)

Subsection 138(11.94) of the Act provides rules that apply to the transfer of an insurance business carried on in Canada by an insurer resident in Canada to a corporation resident in Canada that is a subsidiary wholly-owned corporation of the insurer on a tax-deferred or rollover basis. This provision can apply if the conditions set out in paragraphs 138(11.94)(a) to (d) are met. Paragraph 138(11.94)(b) requires that the transferor transfer all or substantially all of the

property used or held by it in its insurance business in Canada to a subsidiary wholly-owned corporation that commences to carry on that insurance business in Canada. Paragraph 138(11.94)(b) is amended to distinguish a multinational life insurer resident in Canada from other resident insurers. In regards to the former, the defined term "designated insurance property" has been substituted for "property used or held by it in the year in the course of carrying on that insurance business in Canada". In respect of other resident insurers, the rollover provisions continue to apply in respect of "property used or held by it in the year in the course of carrying on that insurance business in Canada".

This amendment applies to the 1997 and subsequent taxation years.

Definitions

ITA

138(12)

"designated insurance property"

The definition of the expression "designated insurance property" in subsection 138(12) of the Act currently directs insurers (other than resident non-life insurers) to use prescribed rules for the 1997 and subsequent taxation years to determine the property falling within its meaning. For earlier years, the expression is to take its meaning from the meaning, in those years, that the expression "property used by it in the year in, or held by it in the year in the course of carrying on an insurance business in Canada" had. The direction to use the prescribed rules is predicated on the proposed regulations dealing with the taxation of resident multinational life insurers and non-resident insurers that carry on an insurance business in Canada starting to apply in 1997.

The definition is amended to provide that insurers must use the prescribed rules to determine its meaning only for the 1999 and subsequent taxation years. For earlier years, it is to take its meaning from the meaning that the expression "property used by it in the year in, or held by it in the year in the course of carrying on an insurance business in Canada" had for the 1996 taxation year. This amendment is consequential on the application of the proposed regulations being delayed to the 1999 and subsequent taxation years.

This amendment applies to the 1997 and subsequent taxation years.

Clause 42

Amount of Employee's Pension Contributions Deductible – Service after 1989

ITA

147.2(4)(a)

Subsection 147.2(4) of the Act provides rules that govern the deductibility of employee contributions to registered pension plans (RPPs). Paragraph 147.2(4)(a) allows an individual to deduct contributions made after 1990 to an RPP in respect of years after 1989, to the extent that the contributions are made in accordance with the terms of the plan as registered. This rule applies whether a contribution is made under a money purchase provision or a defined benefit provision, and whether a contribution is a current service contribution or a past service contribution.

Paragraph 147.2(4)(a) is amended to allow an individual to deduct, in addition to the contributions described above, prescribed eligible contributions. Draft subsection 8501(6.2) of the Regulations prescribes, for this purpose, certain employee contributions that are made under a defined benefit provision of an RPP pursuant to an arrangement under which members of the plan make contributions towards an unfunded liability under the plan. For further details, refer to the commentary on draft subsections 8501(6.1) and (6.2) of the Regulations in Appendix D.

This amendment applies to contributions made after 1990.

Clause 43

Registered Pension Plans – Transfers

ITA

147.3

Section 147.3 of the Act provides rules governing the transfer of funds from registered pension plans (RPPs) to registered retirement savings plans (RRSPs), registered retirement income funds (RRIFs) and other RPPs.

Transfer to RPP, RRSP or RRIF for Spouse on Marriage Breakdown

ITA

147.3(5)(a)

Subsection 147.3(5) of the Act permits the direct transfer of a lump sum amount from an RPP to another RPP, an RRSP or a RRIF for the benefit of the spouse or former spouse of a plan member, where the spouse or former spouse is entitled to the amount pursuant to a court order or written agreement relating to a division of property on marriage breakdown.

Paragraph 147.3(5)(a) is amended to deny the transfer of an amount relating to actuarial surplus. This change is consistent with the transfer rules set out in subsections 147.3(4) and (7), which do not permit a plan member's share of an actuarial surplus to be transferred tax-free to another registered plan.

This amendment applies to transfers that occur after Announcement Date.

Transfer where Money Purchase Plan Replaces Money Purchase Plan

ITA

147.3(7.1)

New subsection 147.3(7.1) of the Act is introduced to permit surplus to be transferred directly from a money purchase provision of an RPP to a money purchase provision of another RPP, where the second plan replaces all or part of the first plan. Subsection 147.3(7.1) is intended to apply to situations involving the reorganization of a money purchase RPP, such as the splitting of one plan into two or more plans or the transfer of one group of employees from one plan to another. The subsection ensures that money purchase surplus can be transferred directly to a replacement money purchase plan. This will enable an employer to use the surplus, for example, to satisfy its obligations to make contributions under the money purchase provision, to make additional allocations to plan members or to pay plan expenses.

Subsection 147.3(7.1) provides that the term "surplus" has the meaning assigned by the Regulations. Subsection 8500(1) of the Regulations, in conjunction with draft subsection 8500(1.1), defines "surplus" for this purpose. "Surplus" under a money purchase provision of an RPP is the portion of the unallocated amount held under the provision that is not attributable to forfeited amounts, employer contributions that will be allocated to members as part of the regular allocation of contributions, or to certain earnings of the plan. Generally, a money purchase surplus would exist only if actuarial surplus was originally transferred from a defined benefit provision of an RPP and if the actuarial surplus was not credited to the members' accounts under the money purchase provision at the time of the transfer.

The following conditions must be met in order for the subsection to apply with respect to the transfer of money purchase surplus:

- the surplus must be transferred in conjunction with the transfer of amounts on behalf of all or a significant number of members of the transferor plan whose money purchase benefits are being replaced by money purchase benefits under the recipient plan; and

- the transfer must be approved in writing by the Minister of National Revenue.

Appendix D contains consequential amendments to Parts LXXXIII and LXXXV of the Regulations to reflect the introduction of subsection 147.3(7.1).

New subsection 147.3(7.1) applies to transfers that occur after 1998.

Transfer where Money Purchase Plan Replaces Defined Benefit Plan

ITA
147.3(8)

Subsection 147.3(8) of the Act permits, in certain circumstances, the direct transfer of property from a defined benefit provision of an RPP to a money purchase provision of another RPP. Subsection 147.3(8) is intended to accommodate the transfer of actuarial surplus where a defined benefit RPP is replaced by a money purchase RPP. One of the conditions that must be met in order for the subsection to apply is that the recipient plan must provide that the surplus be used to satisfy the obligation of employers to make contributions under the recipient plan.

Subsection 147.3(8) is amended to eliminate the condition that the surplus be used to satisfy employer contribution obligations. This will permit the surplus to be used for other purposes relating to the operation of the plan, such as to pay plan expenses or to make additional allocations to plan members. In addition, subsection 147.3(8) is amended to clarify that the provision is intended to apply only to accommodate the transfer of actuarial surplus. It should be noted that paragraph 8506(2)(c) of the Regulations prohibits employer contributions to a money purchase provision where there is a surplus under the provision.

These amendments apply to transfers that occur after 1990.

Clause 44**Miscellaneous Exemptions**

ITA

149

Section 149 of the Act exempts certain taxpayers from tax under Part I of the Act and provides special rules for such taxpayers.

Corporations Owned by Governments and Municipalities in Canada

ITA

149(1)(d) to (d.4) and (d.6)

Paragraphs 149(1)(d) to (d.6) of the Act exempt from tax the taxable income of any corporation, commission or association 100% (or in some instances 90%) of the shares or capital of which is owned by the federal government, a provincial government or a municipality in Canada. The exemption also applies to a wholly-owned subsidiary of such a corporation, commission or association. Paragraphs 149(1)(d) to (d.4) and (d.6) are amended strictly to clarify that the ownership test referred to in those paragraphs can be met through combined ownership. For example, where the federal government and a provincial government each owns 50% of the shares of a corporation, the taxable income of the corporation will be exempt by virtue of paragraph 149(1)(d).

These amendments apply to taxation years and fiscal periods that begin after 1998.

Exception

ITA

149(1.1)

Subsection 149(1.1) of the Act stipulates that, in order for a corporation, commission or association to benefit from the exemption provided under any of paragraphs 149(1)(d) to (d.6), only the federal government, a province or a municipality in Canada can have the right to acquire shares or capital of the corporation, commission or

association. The amendment to subsection 149(1.1) ensures that entities that need only to meet a 90% (rather than a 100%) ownership test would still qualify for the exemption under paragraph 149(1)(d.2), (d.3) or (d.5), as the case may be, provided that non-governmental entities do not, collectively, own shares or capital (or rights to such shares or capital) in excess of 10%.

This amendment applies to taxation years and fiscal periods that begin after 1998.

Election

ITA
149(1.11)

A number of entities which were taxable before 1999 became, as a result of the amendment to paragraph 149(1)(d) of the Act and the addition of paragraphs 149(1)(d.2) to (d.4), exempt under those paragraphs with respect to their post-1998 fiscal periods. This result, which is appropriate from a tax policy standpoint, may not be beneficial for a limited number of entities since it would trigger the application of subsection 149(10) which provides, among other things, that any gain or loss that accrued before the entities become tax-exempt are to be recognized before the change of status.

Accordingly, this amendment allows an entity, which has become exempt because of any of paragraphs 149(1)(d.2) to (d.4) but which was taxable for its last taxation year that began before 1999, to elect to retain its taxable status provided there has been no change in the share or capital ownership of the entity since the beginning of the entity's first taxation year that began after 1998.

This amendment applies to taxation years and fiscal periods that begin after 1998.

Income Test

ITA
149(1.2)

Subsection 149(1.2) of the Act excludes, for the purposes of paragraphs 149(1)(d.5) and (d.6), certain income from the determination of whether more than 10% of the income of an entity

to which one of those two paragraphs applies is derived from activities carried on outside the geographical boundaries of the municipality or municipalities that own the entity. The amendment ensures that income from activities carried on in a province by an entity, as a producer of electrical energy or natural gas or as a distribution of electrical energy, heat, natural gas or water, is not included in the determination where those activities are regulated under the laws of the province.

This amendment applies to taxation years and fiscal periods that begin after 1998.

Clause 45

National Arts Service Organizations

ITA

149.1(6.4)

Subsection 149.1(6.4) of the Act provides that a national arts service organization that is designated by the Minister of Canadian Heritage and registered by the Minister of National Revenue as meeting prescribed criteria shall be treated, for income tax purposes, as if it were a registered charity that is designated as a charitable organization. To this end, that subsection includes references to various provisions of the Act that apply to a charitable organization. The amendment corrects an oversight by adding a reference to subsection 241(3.2) which deals with the communication of information relating to a registered charity.

This amendment comes into force on Royal Assent.

Clause 46

Reassessment Where Amount Included in Income Under Subsection 91(1) is Reduced

ITA

152(6.1)

New subsection 152(6.1) of the Act is consequential to the extension of the deductible loss carryover period for foreign accrual property losses in the description of F in the definition "foreign accrual property income" in subsection 95(1) and section 5903 of the Regulations. Subsection 152(6.1) provides for the reassessment of all relevant taxation years (other than taxation years preceding the particular taxation year) where the taxpayer has filed a prescribed form carrying back a deductible loss from a subsequent taxation year that reduces the taxpayer's income for the particular year under subsection 91(1).

New subsection 152(6.1) applies to taxation years of a foreign affiliate that begin after Announcement Date.

Clause 47

Refunds

ITA

164(1)

Subsection 164(1) of the Act provides rules governing refunds of overpayments of tax.

Subparagraph 164(1)(a)(ii) of the Act is amended to authorize the Minister of National Revenue to refund all or part of a corporation's claim for a taxation year of a Canadian Film or Video Production Tax Credit under section 125.4 or of a Film or Video Production Services Tax Credit under section 125.5 of the Act, before having issued an assessment in respect of the corporation for the year.

Former subparagraph 164(1)(a)(ii) of the Act is re-numbered as subparagraph (iii) and, along with subparagraph (i), is amended to

conform to the language in amended subparagraph (ii). Paragraph 164(1)(b) is amended to reflect the re-numbering of subparagraph 164(1)(a)(ii) as subparagraph 164(1)(a)(iii).

Amended subsection 164(1) of the Act applies to the 1999 and subsequent taxation years.

Clause 48

Tax on Old Age Security Benefits

ITA

180.2(4)(a)(ii)

Section 180.2 of the Act provides for the recovery of Old Age Security (OAS) benefits paid to an individual to the extent that the individual's income for a year exceeds a partially indexed \$50,000 threshold (\$53,215 for 1999). In 1996, the structure of the recovery of OAS benefits was modified by providing for tax to be withheld on the benefits. Given that the amount of the benefits recovered is computed, in part, by reference to 15% of the individual's income in excess of \$50,000 (or effectively 1.25% of the excess on a monthly basis), the formula in subsection 180.2(4) includes an amount of \$625, which is equal to 1.25% of \$50,000. However, because of the recovery of OAS benefits through withholding was introduced in 1996, at the time where the partially indexed threshold was equal to \$53,215, the amount used in the formula should have then be set at \$665, i.e., 1.25% of \$53,215. This amendment corrects this oversight.

This amendment applies after Announcement Date.

Clause 49

Additional Tax Payable by Life Insurance Corporations

ITA

190.1(1.1)

Subsection 190.1(1.1) of the Act imposes an additional temporary tax on the capital employed in Canada for a taxation year of a life insurer

in excess of its capital allowance. The additional tax, which was first announced in the 1992 budget, was scheduled to expire on December 31, 1998. The description of C in the subsection is amended to extend the application of the additional tax for two further years – until December 31, 2000.

This amendment applies to taxation years that end after 1998.

Clause 50

Tax Payable by Recipient of an Ecological Gift

ITA

207.31

Section 207.31 of the Act imposes a tax on charities and Canadian municipalities where they dispose of or change the use of property donated to them as an ecological gift without the approval of the Minister of the Environment. The tax is equal to 50% of the fair market value of the property at the time of the disposition or change in use. The section is amended to clarify that the fair market value will be that amount that would be determined at that time for a donor for the purposes of section 110.1 or 118.1 of the Act, as the case may be.

Amended section 207.3 applies where a charity or municipality disposes of or changes the use of an ecological gift after Announcement Date.

Clause 51

Non-resident Withholding Tax – Interest

ITA

212(1)(b)(ii)(C)(IV)

Clause 212(1)(b)(ii)(C) of the Act provides an exemption from non-resident withholding tax for interest paid on certain government and government-guaranteed debt obligations, as well as debt obligations issued by entities used to be described in paragraph 149(1)(d), before

that paragraph was amended and paragraphs 149(1)(*d.1*) to (*d.6*) were added, effective for taxation years and fiscal periods that begin after 1998. Clause 212(1)(*b*)(ii)(C) is, therefore, amended to refer to paragraphs 149(1)(*d*) to (*d.6*) consequential on the 1998 amendment to subsection 149(1).

This amendment applies to amounts paid or credited after 1998.

Clause 52

Deduction and Payment of Tax – Regulations Reducing Deduction or Withholding

ITA
215(5)

Subsection 215(5) of the Act provides that the Governor in Council may make regulations reducing the tax to be withheld from certain payments made to a non-resident. The amendment to that subsection deletes a reference to paragraph 212(1)(*f*), which has been previously repealed.

This amendment applies to amounts paid or credited after April 1997, which is the time at which the repeal of paragraph 212(1)(*f*) came into force.

Clause 53

Collection Restrictions

ITA
225.1

Section 225.1 of the Act imposes restrictions on the collection of tax where a taxpayer objects to or appeals from an assessment.

ITA
225.1(6)(b)

Subsection 225.1(6) provides for an exception to the collection restrictions in limited circumstances. Paragraph 225.1(6)(b) is amended to clarify that the collection restrictions, which do not apply in cases where source deductions were deducted from an employee's remuneration but not remitted to the Receiver General, also do not apply in cases where source deductions were required to be deducted or withheld but were not so deducted or withheld.

This amendment applies on Royal Assent.

Clause 54

Withholding Taxes

ITA
227

Section 227 of the Act provides special rules relating to source deductions and non-resident withholding tax under sections 153 and 215 respectively, and also deals with the application of certain Parts of the Act to particular persons and entities.

Application to Crown

ITA
227(4.3)

New subsection 227(4.3) of the Act clarifies that the deemed trusts in subsections 227(4) and (4.1) relating to unremitted source deductions are binding on Her Majesty in right of Canada or of a province. Accordingly, the deemed trusts will always take priority over any other security interest in favour of the Crown, subject to prescribed security interests as provided in the Regulations.

Subsection 227(4.3) applies on Royal Assent.

Municipal or Provincial Corporation Excepted

ITA

227(16)

Subsection 227(16) of the Act deems municipal and provincial corporations, which are exempt from tax because of paragraph 149(1)(d), not to be private corporations for the purposes of the Part IV tax. This amendment extends this treatment to corporations that are exempt from tax under any of paragraphs 149(1)(d) to (d.6) and is strictly consequential on the addition of paragraphs 149(1)(d.1) to (d.6) made applicable to taxation years and fiscal periods that begin after 1998.

This amendment applies to taxation years that begin after 1998.

Clause 55

Definitions

ITA

231

Section 231 of the Act provides definitions for the purposes of sections 231.1 to 231.6, the provisions that set out the rules relating to the powers of the Canada Customs and Revenue Agency to audit and examine taxpayers' books and records.

Section 231 is amended to provide that the section also applies to new section 231.7, which deals with compliance orders. For commentary on the new compliance orders, see the commentary on new section 231.7.

This amendment applies on Royal Assent.

Clause 56

Compliance Order

ITA
231.7

Sections 237.1 to 237.6 of the Act set out the rules relating to the powers of the Canada Customs and Revenue Agency (CCRA) to audit and examine taxpayers' books and records. In particular, section 231.1 authorizes the inspection, audit and examination of books, records and property, and section 231.2 provides that the CCRA may by notice require that a person provide information or documents relating to the administration or enforcement of the Act. Where a person refuses to comply with section 231.1 or 231.2, the person is subject to criminal prosecution under section 238 of the Act.

New section 231.7 will allow the Minister of National Revenue to instead seek an order requiring a person to provide the access, assistance, information or document sought under section 231.1 or 231.2 by way of summary application in cases where the Minister has requested that access, assistance, information or document and the person did not comply. The judge hearing the application will have, under subsection 231.7(1), the discretion to allow the order, or to attach such conditions to the order as the judge considers appropriate. Subsection 231.7(2) provides that a person who refuses to comply with the judge's order may be found in contempt of court and will be subject to the processes and punishments of the court that made the order. Subsection 231.7(3) provides that an order made under this new provision may also be appealed to the court to which appeals from the court making the order normally lie, but that the execution of an order is not suspended unless it is so ordered by the court to which the appeal is made.

New subsection 231.7 applies on Royal Assent.

Clause 57**Provision of Information – Registered Charities**

ITA

241(3.2)

Subsection 241(3.2) of the Act permits the Canada Customs and Revenue Agency to release specified information relating to an organization that was at any time a registered charity under the Act. The amendment clarifies that specified information may be released at a time when the organization is no longer a registered charity, provided that the information to be released relates to a period during which the organization was so registered.

This amendment comes into force on Royal Assent.

Clause 58**Transfer Pricing – Contemporaneous Documentation**

ITA

247(4)

Section 247 of the Act provides rules relating to transfer pricing for property and services purchased and sold in cross-border transactions and the determination of amounts for income tax purposes.

Subsection 247(4) of the Act requires a taxpayer to document its transactions that are governed by subsection 247(2), failing which the taxpayer may be liable to the penalty provided in subsection 247(3) in respect of a transaction. Liability for the penalty relies in part on the taxpayer not making reasonable efforts to determine arm's length transfer prices or arm's length allocations in respect of the transaction.

The English version of the subsection states that a person is presumed not to have made reasonable efforts unless the person has fulfilled the conditions set out in the subsection, while the French version states that a person may only be deemed to have made reasonable efforts if the person has fulfilled those conditions.

The French version of subsection 247(4) is amended to correspond with the English version of the subsection.

This amendment applies to adjustments made under subsection 247(4) of the Act for taxation years that begin after 1998.

Clause 59

Definitions

ITA
248(1)

"grandfathered share"

Subsection 248 of the Act defines a number of terms that apply for the purposes of the Act and sets out various rules relating to the interpretation and application of various provisions of the Act.

The definition "grandfathered share" in subsection 248(1) of the Act is amended to correct a cross-reference as a consequence of the movement of the deeming rule in paragraph 112(2.2)(f) of the Act to new paragraph 112(2.22)(a).

This amendment applies in respect of dividends received after 1998.

Clause 60

Definition of "fiscal period"

ITA
249.1(1)

Subsection 249.1(1) of the Act provides the definition "fiscal period" for the purposes of the Act. Paragraph 249.1(1)(b) provides restrictions on the timing of fiscal periods of certain individuals, trusts, partnerships and professional corporations (other than the fiscal period of a business not carried on in Canada or of a prescribed business). For technical reasons related to the promulgation of Regulations, paragraph 249.1(1)(b) is amended so that the exception

refers to a business that is "carried on by a prescribed person or partnership" as well as to a "prescribed business".

This amendment applies to fiscal periods that begin after 1994.

Clause 61

Associated Corporations – Simultaneous Control

ITA

256(6.1)

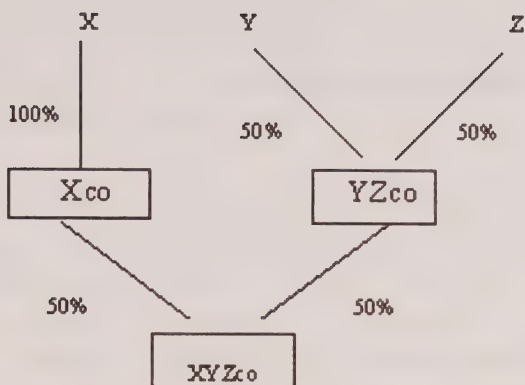
Section 256 of the Act provides rules relevant to the determination, for the purposes of the Act, of whether corporations are associated, whether a corporation is controlled by a person or group of persons, and whether control of a corporation has been acquired.

New subsection 256(6.1) of the Act specifies, for greater certainty, that a corporation may be controlled simultaneously by persons or groups at more than one level above it in a corporate chain.

Paragraph 256(6.1)(a) specifies that, where a subsidiary would be controlled by its parent if the parent were not itself controlled by any other person or group, the subsidiary is considered to be controlled both by the parent and by the person or group that controls the parent.

Paragraph 256(6.1)(b) is a rule of similar effect that applies where the subject corporation would be controlled by a group (the "first-tier group") if no member of the first-tier group were itself controlled by a third party. In that case, the subject corporation is considered to be controlled both by the first-tier group, and by any higher-tier group which includes, in respect of each member of the first-tier group, either the member or a person or group by whom the member is controlled. If one person controls all members of the first-tier group, that person would constitute a higher-tier group.

The operation of paragraph (b) is illustrated by the following example, in which the percentages represent ownership of voting shares, and the various groups identified are assumed to act in concert in voting their shares.



In this example, XYZco is considered to be simultaneously controlled by:

- (i) the first-tier group comprised of Xco and YZco,
- (ii) the higher-tier group comprised of X, Y and Z,
- (iii) the higher-tier comprised of Xco, Y and Z, and
- (iv) the higher-tier group comprised of X and YZco.

While the concepts set out in subsection 256(6.1) deal directly only with a corporation and persons in the two levels of ownership immediately above it, application of the provision sequentially from the top of a chain makes it applicable to corporate chains with three or more levels.

New subsection 256(6.1) applies after Announcement Date.

Application to Control in Fact

ITA

256(6.2)

New subsection 256(6.2) of the Act specifies that the rule regarding simultaneous control in new subsection 256(6.1) also applies to the concept of *de facto* control, which is set out in subsection 256(5.1) of the Act.

New subsection 256(6.2) applies after Announcement Date.

Clause 62

Deemed Interest on Preferred Shares

ITA

258(3)

Section 258 of the Act contains deeming provisions that complement the rules set out in section 112 of the Act, which disallow the intercorporate dividend deduction in respect of dividends paid on certain preferred shares and so-called guaranteed shares.

Subsection 258(3) of the Act provides that certain dividends received by a corporation from a corporation not resident in Canada are to be treated for certain purposes as having been received in the form of interest. This subsection is amended to correct a cross-reference as a consequence of the movement of the deeming rule in paragraph 112(2.2)(f) of the Act to new paragraph 112(2.22)(a).

This amendment applies in respect of dividends received after 1998.

Clause 63

Deemed Non-resident

S.C. 1999, c. 22, ss. 82(8)

Prior to 1998, subsection 250(5) of the *Income Tax Act* contained a deeming rule applicable to corporations – where a corporation that would otherwise be resident in Canada was, under a tax treaty between Canada and another country, resident in the other country, the rule deemed the corporation not to be resident in Canada for the purposes of the *Income Tax Act*.

Subsections 82(4) and 82(8) of the *Income Tax Amendments Act, 1998* extended this rule to both corporations and other persons – new subsection 250(5) deems a person not to be resident in Canada at a time if, at that time, the person, who would otherwise be resident in

Canada under the *Income Tax Act*, "tie-breaks" under a tax treaty as a resident of a treaty country. This new rule was intended to be effective after February 24, 1998, except that an individual who was resident both in Canada and in a treaty country on that day was not to be subject to the new rule until the first time after February 24, 1998 at which that individual "tie-breaks" as a resident of a treaty country other than Canada.

Due to a possible ambiguity in the wording of the coming-into-force provision, subsection 82(8) of the *Income Tax Amendments Act, 1998* is now being clarified to ensure that amended subsection 250(5) applies as described above.

The new coming-into-force provision is deemed to have come into force on June 17, 1999, the day on which the *Income Tax Amendments Act, 1998* received Royal Assent.

APPENDIX A

INSURANCE BUSINESS POLICY RESERVES

DRAFT *INCOME TAX REGULATIONS*

AND EXPLANATORY NOTES

1. (1) The *Income Tax Regulations* are amended by replacing "net premium" with "premium paid by the policyholder" in the following provisions:

(a) the description of A in subsection 1400(3);

(b) paragraphs (a) and (b) of the description of B in subsection 1400(3);

(c) paragraph (b) of subsection 1401(1);

(d) the description of C in subsection 1404(3); and

(e) the definition "reinsurance commission" in subsection 1408(1);

(2) The definitions "acquisition costs" and "net premium for the policy" in subsection 1408(1) of the Regulations are repealed.

(3) Subsections (1) and (2) apply to the 2000 and subsequent taxation years and, where the taxpayer elects under the coming-into-force provision for the amendments to section 18 of the Act, as released in draft form on Announcement Date, to the taxpayer's 1998 and 1999 taxation years.

INSURANCE BUSINESS POLICY RESERVES

EXPLANATORY NOTES

Part XIV

Part XIV of the *Income Tax Regulations* provides rules in respect of insurance business policy reserves.

Part XIV is amended to replace the term "net premium" wherever it appears with the term "premium paid by the policyholder". The change is consequential on newly added subsection 18(9.02) of the Act which denies a deduction on a current basis of acquisition costs of insurance policies (other than a non-cancellable or guaranteed renewable accident and sickness insurance policy, or a life insurance policy that is not a group term life insurance policy that provides coverage for a period of 12 months or less). This amendment ensures that deductions in respect of policy reserves remain consistent with the tax treatment of policy acquisition costs.

This amendment applies to the 2000 and subsequent taxation years and, if a taxpayer files an election in respect of amended subparagraph 18(9)(a)(ii) and new subsection 18(9.02) of the Act, the amendment also applies to the taxpayer's 1998 and 1999 taxation years.

ITR 1408(1)

Subsection 1408(1) of the Regulations defines the term "acquisition costs" to mean a percentage of the premium paid for the policy. The percentages (either 20% or 5%) were based on assumptions relating to the average industry costs for selling, or otherwise distributing, insurance policies. The definition "acquisition costs" is repealed. The change addresses the insurance industry's concern that amounts deemed incurred as acquisition costs (generally 20% of premiums) under the old definition no longer reflect the real acquisition costs being incurred by insurers.

The definition "net premium for the policy" in subsection 1408(1) is also repealed. The definition is repealed because Part XIV no longer determines any amount on the basis of the unearned portion of a net premium for a policy.

This amendment applies to the 2000 and subsequent taxation years and, if a taxpayer files an election in respect of amended subparagraph 18(9)(a)(ii) and new subsection 18(9.02) of the Act, the amendment also applies to the taxpayer's 1998 and 1999 taxation years.

APPENDIX B

FOREIGN AFFILIATES – PARTNERSHIPS

DRAFT INCOME TAX REGULATIONS

AND EXPLANATORY NOTES

1. (1) The portion of subsection 5900(2) of the *Income Tax Regulations* before paragraph (a) is replaced by the following:

(2) Notwithstanding paragraphs (1)(a) and (b), where at any time a foreign affiliate of a corporation resident in Canada pays a dividend on a share of a class of its capital stock (other than a dividend referred to in subsection 93(1) or (1.2) of the Act) to the corporation, the corporation may, in its return of income under Part I of the Act for its taxation year in which the dividend was received by it, designate an amount not exceeding the portion of the dividend received that would, but for this subsection, be prescribed to have been paid out of the affiliate's exempt surplus in respect of the corporation and that amount

(2) Subsection 5900(3) of the Regulations is replaced by the following:

(3) For the purpose of subsection 91(5) of the Act, where at any time a person (other than a corporation) resident in Canada receives a dividend on a share of any class of the capital stock of a foreign affiliate of that person, the affiliate is deemed to have an amount of taxable surplus in respect of the person and the portion of the dividend paid out of the taxable surplus of the affiliate in respect of the person is prescribed to be an amount equal to the dividend received.

2. (1) The portion of subsection 5902(1) of the Regulations before paragraph (a) is replaced by the following:**Election in respect
of capital gains**

(1) Where at any time a dividend is, because of an election made under subsection 93(1) or (1.2) of the Act in respect of a disposition,

deemed to have been received on one or more shares of a class of the capital stock of a particular foreign affiliate of a corporation resident in Canada, the following rules apply:

(2) The portion of subparagraph 5902(1)(c)(ii) of the Regulations before clause (A) is replaced by the following:

(ii) the particular affiliate is deemed to have paid a whole dividend at that time on the shares of that class of its capital stock in an amount equal to the product obtained when the total of amounts so deemed by subsection 93(1) or (1.2) of the Act to have been received as dividends on shares of that class is multiplied by the greater of

(3) Subsection 5902(3) of the Regulations is replaced by the following:

(3) Where an election under subsection 93(1) or (1.2) of the Act is made by a corporation resident in Canada in respect of the disposition of a share of the capital stock of a foreign affiliate of the corporation, no adjustment shall be made to the affiliate's exempt surplus, exempt deficit, taxable surplus, taxable deficit or underlying foreign tax in respect of the corporation as a consequence of the election except as provided in subsections 5905(2), (5) and (8).

(4) Subsection 5902(5) of the Regulations is replaced by the following:

(5) Any election under subsection 93(1) or (1.2) of the Act by a corporation resident in Canada in respect of any share of the capital stock of a foreign affiliate of the corporation disposed of by it, by a foreign affiliate of the corporation or by a partnership shall be made by filing the prescribed form with the Minister on or before the day that is,

(a) where the election is made in respect of a share disposed of by the corporation, the corporation's filing-due date for its taxation year in which the disposition was made;

(b) where the election is made in respect of a share disposed of by a foreign affiliate of the corporation, the corporation's filing-due date for its taxation year in which the taxation

year of the foreign affiliate in which the disposition was made ends; and

(c) where the election is made in respect of a share disposed of by a partnership, and

(i) the disposing corporation referred to in subsection 93(1.2) of the Act is the corporation, the corporation's filing-due date for its taxation year in which the fiscal period of the partnership in which the disposition was made ends, or

(ii) the disposing corporation referred to in subsection 93(1.2) of the Act is a foreign affiliate of the corporation, the corporation's filing-due date for its taxation year in which the taxation year of the foreign affiliate which includes the last day of the fiscal period of the partnership in which the disposition was made ends.

(5) Subsection 5902(6) of the Regulations is replaced by the following:

(6) Where at any time a corporation resident in Canada is deemed by of subsection 93(1.1) or (1.3) of the Act to have made an election under subsection 93(1) or (1.2) of the Act in respect of a share of the capital stock of a particular foreign affiliate of the corporation disposed of by a foreign affiliate of the corporation or by a partnership, the amount deemed to have been designated in the election is prescribed to be the lesser of

(a) the capital gain (or where subsection 93(1.2) of the Act applies, the taxable capital gain), if any, otherwise determined in respect of the disposition of the share; and

(b) the amount (or where subsection 93(1.2) of the Act applies, 3/4 of the amount) that could reasonably be expected to have been received in respect of the share if the particular affiliate had at that time paid dividends the aggregate of which on all shares of its capital stock was equal to the amount determined under paragraph 1(a) to be its net surplus in respect of the corporation for the purposes of the election.

3. (1) The portion of paragraph 5905(2)(a) of the Regulations before subparagraph (i) is replaced by the following:

(a) where, because of an election made by the corporation under subsection 93(1) or (1.2) of the Act, a dividend is deemed to have been received on one or more of the shares of the foreign affiliate that were disposed of by the corporation or by another foreign affiliate of the corporation (in this paragraph referred to as the "transferor") because of the redemption, acquisition or cancellation of such share or shares by the foreign affiliate, for the purposes of the adjustment required by paragraph (b),

(2) Paragraph 5905(6)(a) of the Regulations is replaced by the following:

(a) where paragraph (5)(a) applies and the predecessor corporation is, because of an election made under subsection 93(1) or (1.2) of the Act, deemed to have received a dividend on one or more of the shares of the particular affiliate disposed of in the transaction, for the purposes of the adjustment required by paragraph (b),

(3) The portion of subsection 5905(8) of the Regulations before paragraph (a) is replaced by the following:

(8) Where at any time a dividend is, because of an election made by a corporation under subsection 93(1) or (1.2) of the Act, deemed to have been received on one or more shares of a class of the capital stock of a particular foreign affiliate of the corporation disposed of to the corporation or to another corporation that was a foreign affiliate of the corporation immediately after the disposition, the following rules apply:

(4) Section 5905 of the Regulations is amended by adding the following after subsection (13):

(14) For the purpose of this section, where the number of shares of a class of the capital of the capital stock of a foreign affiliate of a corporation resident in Canada deemed by subsection 93.1(1) of the Act to be owned by a person at a particular time is different from the number so deemed immediately before the particular time

(a) if the number of shares of that class deemed to be owned by the person has decreased, the person is deemed to have disposed of, at the particular time, the number of shares of that class equal to the amount of the decrease;

(b) if the number of shares of that class deemed to be owned by the person has increased, the person is deemed to have acquired, at the particular time, the number of shares of that class equal to the amount of the increase;

(c) a person (in this paragraph referred to as the "seller") that is deemed by paragraph (a) to have disposed of, at a particular time, shares of a class is deemed to have disposed of those shares to the persons (in this paragraph referred to as the "acquirers") deemed in paragraph (b) to have acquired shares of that class at that time and the number of shares of that class deemed to have been acquired at that time by a particular acquirer from the seller shall be determined by the formula

$$A(B/C)$$

where

A is the number of shares of that class acquired by the particular acquirer at that time,

B is the number of shares of that class disposed of by the seller at that time, and

C is the number of shares of that class acquired by all acquirers at that time; and

(d) persons (in this paragraph referred to as the "acquirers") that are deemed by paragraph (b) to have acquired, at a particular time, shares of a class are deemed to have acquired those shares from a person (in this paragraph referred to as the "seller") deemed in paragraph (a) to have disposed of shares of that class at that time and the number of shares of that class deemed to have been disposed of by the seller to a particular acquirer at that time shall be determined by the formula

$$A(B/C)$$

where

- A is the number of shares of that class disposed of by the seller,
- B is the number of shares of that class acquired by the particular acquirer at that time, and
- C is the number of shares of that class time disposed of by all sellers at that time.

(15) In determining,

(a) for the purpose of this Part (other than section 5904), the equity percentage at any time of a person in a corporation,

(b) for the purpose of this section, the surplus entitlement at any time of a share owned by a corporation resident in Canada of the capital stock of a foreign affiliate of the corporation in respect of a particular foreign affiliate of the corporation, and

(c) for the purposes of this Part and of the definition "surplus entitlement percentage" in subsection 95(1) of the Act, the surplus entitlement percentage at any time of a corporation resident in Canada in respect of a particular foreign affiliate of the corporation,

where at any time shares of a class of the capital stock of a corporation are owned by a partnership or are deemed under this subsection to be owned by a partnership, those shares are deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of all such shares that

(d) the fair market value of the member's interests in the partnership at that time

is of

(e) the fair market value of all members' interest in the partnership at that time.

4. (1) Section 1 applies to dividends received after Announcement Date.

(2) Section 2 applies to dispositions that occur after Announcement Date.

(3) Section 3 applies after Announcement Date.

FOREIGN AFFILIATES – PARTNERSHIPS

EXPLANATORY NOTES

ITR
5900(2)

Subsection 5900(2) of the *Income Tax Regulations* allows a corporation resident in Canada to elect to have a dividend paid by a foreign affiliate of the corporation to be treated as having been paid out of the taxable surplus rather than out of the exempt surplus of the affiliate. This election is not available where the corporation has elected under subsection 93(1) of the Act to treat proceeds of disposition of a share of a foreign affiliate as a dividend. The amendment ensures that the election in subsection 5900(2) will not apply where the corporation has elected under new subsection 93(1.2) of the Act to treat all or a portion of its gain from a partnership arising on the disposition of a share of a foreign affiliate by the partnership as a dividend.

This amendment applies to dividends received after Announcement Date.

ITR
5900(3)

Subsection 5900(3) of the Regulations applies where an individual resident in Canada receives a dividend from a foreign affiliate. For the purpose of subsection 91(5) of the Act, subsection 5900(3) deems the individual to have received all dividends out of the taxable surplus of the affiliate. Subsection 91(5) of the Act permits deductions in respect of dividends paid out of the taxable surplus of an affiliate to the extent that that surplus is represented by foreign accrual property income of the affiliate that has been taxed in the hands of the dividend recipient.

The amendment to subsection 5900(3) replaces the word "individual" with the phrase "person (other than a corporation)". This amendment clarifies that, for the purpose of subsection 91(5), where a partnership is deemed to be a person under section 96 of the Act the partnership is deemed to have received all dividends out of taxable surplus.

This amendment applies to dividends received after Announcement Date.

Election in respect of Capital Gains

ITR

5902(1)

Section 5902 of the Regulations applies where a corporation elects to treat proceeds of disposition of a share of a foreign affiliate as a dividend under subsection 93(1) of the Act. Subsection 5902(1) computes a foreign affiliate's surplus accounts and the amount of a whole dividend used in applying subsection 5901(1) for the purposes of subsection 5900(1) of the Regulations. The amendment to subsection 5902(1) ensures that the subsection will also apply where the corporation resident in Canada has elected under new subsection 93(1.2) of the Act to treat a gain from a partnership arising on the disposition of a share of a foreign affiliate of the corporation by the partnership as a dividend.

This amendment applies to dispositions that occur after Announcement Date.

ITR

5902(3)

Subsection 5902(3) of the Regulations indicates that where an election is made under subsection 93(1) of the Act, no adjustment shall be made to the affiliate's exempt surplus, exempt deficit, taxable surplus, taxable deficit or underlying foreign tax in respect of the corporation as a consequence of the election except as provided in subsections 5905(2), (5) and (8). The amendment to subsection 5902(3) extends the application of the provision to elections made under new subsection 93(1.2) of the Act.

This amendment applies to dispositions that occur after Announcement Date.

ITR
5902(5)

Subsection 5902(5) of the Regulations provides that any election under subsection 93(1) of the Act must be made by filing the prescribed form by the corporation's filing-due date for the relevant year. Where the disposition is made by the corporation, the relevant year is the taxation year of the corporation in which the disposition was made. Where the disposition is made by a foreign affiliate of the corporation, the relevant year is the taxation year of the corporation in which the taxation year of the foreign affiliate in which the disposition was made ends.

The amendments to subsection 5902(5) extend its application to include elections made under new subsection 93(1.2) of the Act. Where the disposition is made by a partnership, the relevant year depends on whether the "disposing corporation" in subsection 93(1.2) of the Act is the corporation or a foreign affiliate of the corporation. Where the disposing corporation is the corporation, the relevant year is the taxation year of the corporation in which the fiscal period of the partnership in which the disposition was made ends. Where the disposing corporation is a foreign affiliate of the corporation, the relevant year is the taxation year of the corporation in which the taxation year of the affiliate which includes the last day of the fiscal period of the partnership in which the disposition was made ends.

This amendment applies to dispositions that occur after Announcement Date.

ITR
5902(6)

Subsection 5902(6) of the Regulations applies where subsection 93(1.1) of the Act deems a corporation to have made an election under subsection 93(1) to treat proceeds of disposition of a share of a foreign affiliate as a dividend. Subsection 5902(6) deems the amount designated in the deemed election to be the lesser of the capital gain otherwise determined in respect of the disposition of the share and the amount that could reasonably be expected to have been received on the share if the affiliate had paid its net surplus in respect of the corporation as a dividend.

Subsection 5902(6) is amended to ensure that the subsection will apply where new subsection 93(1.3) of the Act deems a corporation resident in Canada to have made an election under proposed subsection 93(1.2) of the Act in respect of a taxable capital gain from a deemed disposition of a share of a foreign affiliate of the corporation disposed of by a partnership of which another foreign affiliate of the corporation is a member.

This amendment applies to dispositions that occur after Announcement Date.

ITR
5905(2)

Subsection 5905(2) of the Regulations applies where shares of a foreign affiliate of a corporation resident in Canada are redeemed or cancelled (otherwise than by way of a winding-up). If the corporation has made an election under subsection 93(1) of the Act or if the corporation's surplus entitlement percentage in the affiliate changes, then the affiliate's surplus balances are adjusted to offset the change in the surplus entitlement percentage. The amendments to subsection 5905(2) ensure that the subsection will also apply where an election is made under subsection 93(1.2) of the Act.

These amendments apply after Announcement Date.

ITR
5905(6)(a)

Paragraph 5905(6)(a) of the Regulations applies for the purpose of paragraph 5905(5)(a) to adjust the surplus balances of a particular foreign affiliate of a corporation resident in Canada where the corporation has made an election under subsection 93(1) of the Act. The amendment to paragraph 5905(6)(a) ensures that the paragraph will also apply where the corporation has made an election under new subsection 93(1.2) of the Act.

This amendment applies after Announcement Date.

ITR
5905(8)

Subsection 5905(8) of the Regulations reduces the surplus accounts of a particular foreign affiliate of a corporation resident in Canada where a dividend is deemed to have been received from the particular affiliate following an election under subsection 93(1) of the Act. The amendment to subsection 5905(8) ensures that the subsection will also apply where a dividend is deemed to have been received from the particular affiliate following an election under new subsection 93(1.2) of the Act.

This amendment applies after Announcement Date.

ITR
5905(14)

New subsection 93.1(1) of the Act deems, for certain purposes, a member of a partnership to own its proportionate number of shares of a non-resident corporation held by a partnership. New subsection 5905(14) of the Regulations applies where the number of shares of a foreign affiliate of a corporation resident in Canada deemed to be owned by a person under subsection 93.1(1) increases or decreases.

Where the number of shares deemed to be held by the person has decreased, the person is deemed to have disposed of shares to the extent of the decrease. Where the number of shares deemed to be held by the person has increased, the person is deemed to have acquired shares to the extent of the increase. Persons that are treated as having acquired shares of class are treated as having acquired those shares proportionately from persons that are treated as having disposed of shares of that class and vice versa.

New subsection 5905(14) applies after Announcement Date.

ITR
5905(15)

New subsection 5905(15) of the Regulations applies to determine the equity percentage (other than for section 5904), surplus entitlement of a share and the surplus entitlement percentage at any time of a corporation resident in Canada in respect of a particular foreign

affiliate of the corporation where the shares of the foreign affiliate are property of a partnership. Each member of the partnership is deemed to own that proportion of the number of the shares held by the partnership that the fair market value of the member's interest in the partnership is of the fair market value of all the members' interests in the partnership.

New subsection 5905(15) applies after Announcement Date.

APPENDIX C

FOREIGN AFFILIATES – FAPI

DRAFT *INCOME TAX REGULATIONS*

AND EXPLANATORY NOTES

1. (1) Section 5903 of the *Income Tax Regulations* is replaced by the following:

5903. (1) For the purpose of the description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act, the deductible loss of a foreign affiliate of a taxpayer for a particular taxation year of the affiliate is the amount claimed by the taxpayer not exceeding the foreign accrual property loss of the affiliate for the seven taxation years of the affiliate preceding and the three taxation years of the affiliate following the particular year.

(2) In determining the deductible loss of a foreign affiliate of a taxpayer for a particular taxation year of the affiliate

(a) the amount claimed under subsection (1) in respect of a foreign accrual property loss of the affiliate for a taxation year of the affiliate shall not exceed the amount by which that loss exceeds the total of all amounts each of which was an amount claimed by any taxpayer in respect of that loss in computing the deductible loss of the affiliate for taxation years of the affiliate before the particular year; and

(b) no amount may be claimed in respect of a foreign accrual property loss of a foreign affiliate for a taxation year of the affiliate until the foreign accrual property losses of the affiliate for preceding taxation years have been fully claimed.

(3) For the purpose of this section, and subject to subsection (4), "foreign accrual property loss" of a foreign affiliate of a taxpayer for a taxation year means

(a) where at the end of the year the foreign affiliate was a controlled foreign affiliate of the taxpayer, the amount, if any, by which

(i) the total of the amounts determined for D and E in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the affiliate for the year

exceeds

(ii) the total of the amounts determined for A, B, and C in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the affiliate for the year, or

(b) where, at the end of the year, the foreign affiliate was not a controlled foreign affiliate of the taxpayer but was a controlled foreign affiliate of a person described in any of subparagraphs 95(2)(f)(iv) to (vii) of the Act, the amount determined under paragraph (a) for the year.

(4) In computing the foreign accrual property loss of a particular foreign affiliate of a taxpayer for a taxation year of the affiliate, where the particular affiliate or another corporation has received a payment described in subsection 5907(1.3) from another foreign affiliate of the taxpayer which payment can reasonably be considered to relate to a loss or portion of a loss of the particular affiliate for the year described in the description of D or E of the definition "foreign accrual property income" in subsection 95(1) of the Act, the amount of the loss or portion of the loss for the year is deemed to be nil.

(5) For the purpose of this section, where there has been a foreign merger (within the meaning assigned by subsection 87(8.1) of the Act) of two or more foreign affiliates of a taxpayer resident in Canada in respect of each of which the taxpayer's surplus entitlement percentage immediately before the merger was not less than 90 percent (each of which is in this subsection referred to as a "predecessor affiliate") to form a new foreign affiliate in respect of which the taxpayer's surplus entitlement percentage immediately after the merger was not less than 90 percent (in this section referred to as the "successor affiliate"), the successor is deemed to be the same corporation as, and a continuation of, each predecessor affiliate.

(6) For the purpose of this section, where there has been a winding-up of one or more foreign affiliates of a taxpayer resident in Canada in respect of which the taxpayer's surplus entitlement percentage immediately before the winding-up was not less than 90 percent (each of which is in this subsection referred to as a "predecessor affiliate") into another foreign affiliate of the taxpayer in respect of which the taxpayer's surplus entitlement percentage immediately before and after the winding-up was not less than 90 percent (in this subsection referred to as the "successor affiliate"), the successor affiliate is deemed to be the same corporation as, and a continuation of, each predecessor affiliate.

2. (1) The portion of subsection 5907(1.3) of the Regulations before paragraph (a) is replaced by the following:

(1.3) For the purpose of paragraph (b) of the definition "foreign accrual tax" in subsection 95(1) of the Act and subject to subsection (1.4),

(2) Section 5907 of the Regulations is amended by adding the following after subsection (1.3):

(1.4) Any amount paid by a particular affiliate described in paragraph (1.3)(a) or (b) does not include any amount paid by the particular affiliate to any other corporation where the amount paid can reasonably be considered to be in respect of a loss of any other corporation and such loss would not be a foreign accrual property loss of the other corporation (as defined in subsection 5903(3)) without taking into account the particular payment.

3. (1) Subsection (1) applies to taxation years of foreign affiliates that begin after 1998, except that paragraph 5903(2)(b) of the Regulations, as enacted by subsection (1), applies to foreign affiliate taxation years that begin after 2000.

(2) Section 2 applies to taxation years that begin after Announcement Date.

FOREIGN AFFILIATES – FAPI LOSSES

EXPLANATORY NOTES

ITR
5903

The description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act allows foreign accrual property income of an affiliate for a year to be reduced by the amount prescribed by section 5903 of the *Income Tax Regulations* to be the deductible loss of the affiliate for the year and the five immediately preceding taxation years. The amendments to section 5903 and the description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act provide that deductible losses may include foreign accrual property losses for the three taxation years following and the seven taxation years preceding the year.

Amended subsection 5903(1) allows a taxpayer to include in the deductible loss of a foreign affiliate an amount not exceeding the foreign accrual property loss of the affiliate for the seven taxation years immediately preceding and the three taxation years immediately following the particular year. Losses for other taxation years will not be included in the deductible loss of the foreign affiliate.

Amended subsection 5903(2) of the Regulations provides that, in determining the deductible loss of a foreign affiliate of a taxpayer for a particular taxation year, the amount claimed under subsection 5903(1) in respect of a foreign accrual property loss of the affiliate for a taxation year of the affiliate cannot exceed the total of amounts previously claimed by any taxpayer in respect of that loss. Also, no amount may be claimed in respect of a foreign accrual property loss until the foreign accrual property loss for preceding taxation years has been fully claimed.

Amended subsection 5903(3) of the Regulations defines foreign accrual property loss of a foreign affiliate of a taxpayer for a taxation year. Where, at the end of a taxation year, a foreign affiliate is a controlled foreign affiliate of the taxpayer or a person related to the taxpayer, the foreign accrual property loss of the affiliate is the amount, if any, by which $(D+E)$ exceeds $(A+B+C)$ in the definition "foreign accrual property income" in subsection 95(1) of the Act.

New subsection 5903(4) of the Regulations provides that, where a foreign affiliate of a taxpayer received a payment described in subsection 5907(1.3) of the Regulations from another affiliate or another corporation, which payment was related to a loss or portion of a loss of the affiliate, the amount of the loss or portion of the loss for the year shall be deemed to be nil.

New subsections 5903(5) and (6) of the Regulations provides that a predecessor affiliate's deductible loss may flow through to a successor affiliate following a foreign merger or a winding-up of one or more affiliates of a taxpayer provided the taxpayer's surplus entitlement percentage exceeds 90 percent in each predecessor affiliate and in the successor affiliate.

The amendments to section 5903 apply to taxation years of a foreign affiliate that begin after 1998, except that paragraph 5903(2)(b) of the Regulations applies to foreign affiliate taxation years that begin after 2000.

ITR

5907(1.3) and (1.4)

Subsection 91(4) of the Act provides for a deduction in the computation of a taxpayer's income in respect of foreign accrual tax that is attributable to an amount of foreign accrual property income included in the computation of the taxpayer's income. Subsection 95(1) of the Act defines foreign accrual tax to include amounts prescribed to be foreign accrual tax.

In circumstances where the loss of another corporation in a particular group of foreign affiliates of a taxpayer is relevant in the computation of the tax liability of the group to a foreign government, paragraphs 5907(1.3)(a) and (b) of the Regulations provides that an amount paid by the particular corporation to the other corporation in the group in respect of the use of a loss of any other corporation in the computation of the group's tax liability to the foreign government is foreign accrual tax. These provisions apply where the loss of the other corporation is an active business loss or a capital loss resulting from the disposition of excluded property as well as where the loss is a foreign accrual loss as defined in subsection 5903(3) of the Regulations. Subsection 5907(1.3), which applies to taxation years

that begin after Announcement Date, is amended as a consequence of the introduction of subsection 5907(1.4) of the Regulations.

New subsection 5907(1.4) ensures that in such circumstances the amount paid by the particular affiliate to the other corporation will only be foreign accrual tax to the extent that the amount paid is in respect of a foreign accrual property loss of any other corporation. This is consistent with the fact that, under section 5903 of the Regulations, active business losses and capital losses resulting from the disposition of excluded property of a foreign affiliate of a taxpayer are not included in the computation of a deductible loss which may be used to reduce foreign accrual property income of that affiliate in a particular taxation year.

This amendment applies to taxation years that begin after Announcement Date.

APPENDIX D

REGISTERED PENSION PLANS

DRAFT *INCOME TAX REGULATIONS*

AND EXPLANATORY NOTES

1. Paragraph 8300(8)(a) of the *Income Tax Regulations* is amended by striking out the word "or" at the end of subparagraph (ii), by striking out the word "and" at the end of subparagraph (iii), by adding the word "or" at the end of subparagraph (iii) and by adding the following after subparagraph (iii):

(iv) property transferred to the provision in respect of the surplus under another money purchase provision of the plan or under a money purchase provision of another registered pension plan, and

2. Paragraph 8301(4)(b) of the *Regulations* is amended by striking out the word "or" at the end of subparagraph (ii), by adding the word "or" at the end of subparagraph (ii.1) and by adding the following after subparagraph (ii.1):

(ii.2) property transferred to the provision in respect of the surplus under another money purchase provision of the plan or under a money purchase provision of another registered pension plan,

3. (1) Section 8500 of the *Regulations* is amended by adding the following after subsection (1):

(1.1) The definition "surplus" in subsection (1) applies for the purpose of subsection 147.3(7.1) of the Act.

(2) Subsection 8500(7) of the *Regulations* is amended by striking out the word "or" at the end of paragraph (b), by adding the word "or" at the end of paragraph (c) and by adding the following after paragraph (c):

(d) property transferred to the provision in respect of the surplus under another money purchase provision of the plan or under a money purchase provision of another registered pension plan

4. Section 8501 of the Regulations is amended by adding the following after subsection (6):

**Member
contributions for
unfunded liability**

(6.1) For the purposes of the conditions in this Part, a contribution made by a member of a pension plan in respect of a defined benefit provision of the plan is deemed to be a current service contribution made by the member in respect of the member's benefits under the provision if

- (a) the contribution cannot, but for this subsection, reasonably be considered to be made in respect of the member's benefits under the provision;
- (b) the contribution is determined by reference to the actuarial liabilities under the provision in respect of periods before the time of the contribution; and
- (c) the contribution is made pursuant to an arrangement
 - (i) under which all, or a significant number, of the active members of the plan are required to make similar contributions,
 - (ii) the main purpose of which is to ensure that the plan has sufficient assets to pay benefits under the provision, and
 - (iii) that is approved by the Minister.

**Prescribed eligible
contributions**

(6.2) For the purpose of paragraph 147.2(4)(a) of the Act, a contribution described in subsection (6.1) is a prescribed eligible contribution.

5. (1) Subparagraph 8502(d)(ii) of the Regulations is replaced by the following:

(ii) a transfer of property held in connection with the plan where the transfer is made in accordance with subsection 147.3(3), (4.1), (7.1) or (8) of the Act,

(2) Paragraph 8502(k) of the Regulations is replaced by the following:

**Transfer of property
between provisions**

(k) property that is held in connection with a benefit provision of the plan is not made available to pay benefits under another benefit provision of the plan (including another benefit provision that replaces the first benefit provision), except where the transaction by which the property is made so available is such that if the benefit provisions were in separate registered pension plans, the transaction would constitute a transfer of property from one plan to the other in accordance with any of subsections 147.3(1) to (4.1), (6), (7.1) and (8) of the Act;

6. (1) Section 1 and subsection 3(2) apply to allocations that occur after 1998.

(2) Section 2 applies to the determination of pension credits for 1999 and subsequent years.

(3) Subsection 3(1) applies after 1998.

(4) Section 4 applies to contributions made after 1990.

(5) Section 5 applies to transactions that occur after 1998.

REGISTERED PENSION PLANS

EXPLANATORY NOTES

Interpretation

ITR

8300(8)(a)

Subsection 8300(8) of the *Income Tax Regulations* deems certain amounts allocated to an individual under a money purchase provision of a registered pension plan (RPP) to be employer contributions for the purpose of Part LXXXIII of the Regulations. The subsection applies where

- the allocation is attributable to forfeitures or surplus under the money purchase provision, or to surplus transferred from a defined benefit provision, and
- the allocation is in lieu of an employer contribution.

Subsection 8300(8) will generally not affect the calculation of pension credits. However, it is relevant for the application of subsections 8308(5) and (6) (retroactive contributions in respect of a period of reduced services) and subsection 8308(7) (loaned employee rules).

Subsection 8300(8) is amended so that it also applies with respect to allocations that are attributable to money purchase surplus transferred from another money purchase provision. This amendment is consequential on the introduction of new subsection 147.3(7.1) of the Act, which permits the transfer of surplus from one money purchase plan to another. It should be noted that this amendment is relevant only where money purchase surplus is allocated to an individual at the time of the transfer. Existing subparagraph 8300(8)(a)(ii) would apply with respect to allocations that occur after the time of the transfer.

This amendment applies to allocations that occur after 1998.

Pension credit – money purchase provision

ITR

8301(4)(b)

In general terms, subsection 8301(4) of the Regulations defines the pension credit of an individual for a year in respect of an employer under a money purchase provision of a pension plan to be the total of

- contributions made in the year by the individual or by the employer with respect to the individual, and
- amounts allocated to the individual in the year that are attributable to forfeited amounts, to surplus under the provision or to surplus transferred from a defined benefit provision.

Paragraph 8301(4)(b) is amended to include in an individual's pension credit any amount allocated to the individual that is attributable to surplus transferred to the provision from another money purchase provision. This amendment is consequential to the introduction of subsection 147.3(7.1) of the Act, which permits the transfer of surplus from one money purchase plan to another. It should be noted that this amendment is relevant only where the money purchase surplus is allocated to an individual immediately upon being transferred. Where the allocation is made after the time of the transfer, existing subparagraph 8301(4)(b)(ii) would apply to include the allocated amount in the individual's pension credit.

It should also be noted that, where such an allocation is in lieu of an employer contribution, amended subsection 8300(8) deems the allocated amount to be an employer contribution rather than an amount attributable to surplus. Thus, the amount is included in the individual's pension credit as an employer contribution, and not as an allocation of surplus.

This amendment applies in determining pension credits for 1999 and subsequent years.

Interpretation

ITR

8500(1.1)

New subsection 147.3(7.1) of the Act permits, in certain circumstances, surplus under a money purchase provision of an RPP to be transferred to a money purchase provision of another RPP. Subsection 147.3(7.1) provides that the term "surplus" has the meaning assigned by the Regulations. New subsection 8500(1.1) of the Regulations provides that the definition of "surplus" in subsection 8500(1) of the Regulations applies for this purpose.

This amendment applies after 1998.

ITR

8500(7)

Subsection 8500(7) of the Regulations deems certain amounts allocated to an individual under a money purchase provision of an RPP to be contributions made on behalf of the individual for the purposes of a number of provisions in Part LXXXV that depend on whether money purchase contributions are made on behalf of an individual. Subsection 8500(7) applies with respect to allocated amounts that are attributable to forfeited amounts, to surplus under the provision or to surplus transferred from a defined benefit provision.

Subsection 8500(7) is amended so that it also applies with respect to allocations that are attributable to money purchase surplus transferred from another money purchase provision. This amendment is consequential on the introduction of new subsection 147.3(7.1) of the Act, which permits the transfer of surplus from one money purchase plan to another. It should be noted that this amendment is relevant only where money purchase surplus is allocated to an individual at the time of the transfer. Existing paragraph 8500(7)(b) would apply with respect to allocations that occur after the time of the transfer.

This amendment applies to allocations that occur after 1998.

Member contributions for unfunded liability

ITR

8501(6.1)

New subsection 8501(6.1) of the Regulations applies where member contributions under a defined benefit provision of a pension plan are made in respect of an unfunded liability, rather than in respect of the member's benefits. The purpose of this subsection is to accommodate arrangements under defined benefit pension plans that require participating employers and plan members to share in the funding of an unfunded liability.

Under some shared-funding arrangements, member contributions that are dedicated towards the plan's unfunded liability are not considered to be made in respect of the member's benefits. Subsection 8501(6.1) provides that, for the purposes of the conditions in Part LXXXV, such contributions are considered to be current service contributions made in respect of the member's benefits under the provision. This ensures that the contributions are not prohibited by the permissible contribution rule in paragraph 8502(*b*). It also requires that the contributions be taken into account for the purpose of satisfying the current service contribution limit in paragraph 8503(4)(*a*). It should be noted that subsection 8503(5) may be relevant where the member contribution rate under a shared funding arrangement is set a level that results in the condition in paragraph 8503(4)(*a*) not being met. Subsection 8503(5) allows the Minister to waive the condition on maximum member contributions where it is reasonable to expect, on a long-term basis, that the regular current service contributions made by members will fund no more than one-half of the related benefits.

New subsection 8501(6.1) applies where:

- member contributions under a defined benefit provision of a pension plan are determined by reference to the actuarial liabilities under the provision;
- the contributions cannot reasonably be considered to be in respect of the member's benefits;

- the contributions are made pursuant to an arrangement approved by the Minister that requires all or a significant number of the active members of the plan to make similar contributions; and
- the main purpose of the arrangement is to ensure that the plan is adequately funded.

Subsection 8501(6.1) applies to contributions made after 1990.

Prescribed eligible contributions

ITR

8501(6.2)

New subsection 8501(6.2) of the Regulations provides that contributions described in subsection 8501(6.1) are prescribed eligible contributions for the purpose of the deductibility rules in amended paragraph 147.2(4)(a) of the Act. This ensures that member contributions made pursuant to a shared-funding arrangement are deductible even though they are not considered to relate to a particular year.

Subsection 8501(6.2) applies to contributions made after 1990.

Permissible distributions

ITR

8502(d)

Paragraph 8502(d) of the Regulations restricts the distributions that may be made out of an RPP.

Paragraph 8502(d) is amended to add to the list of permissible distributions a transfer of property made in accordance with new subsection 147.3(7.1) of the Act. Subsection 147.3(7.1) permits the transfer of surplus from one money purchase plan to another, where the second plan replaces all or part of the first plan.

This amendment, which is consequential to the introduction of subsection 147.3(7.1), applies to transactions that occur after 1998.

Transfer of property between provisions

ITR

8502(k)

Paragraph 8502(k) of the Regulations requires that property held in connection with one benefit provision of an RPP not be made available to pay benefits under another benefit provision of the same plan. The paragraph exempts from this restriction a transfer of property from one provision of a plan to another where the transfer would be in accordance with any of subsections 147.3(1) to (4.1), (6) and (8) of the Act if the two provisions were in separate RPPs.

Paragraph 8502(k) is amended to add to the list of exempted transfers an intra-plan transfer that would be in accordance with new subsection 147.3(7.1) of the Act. That subsection permits the transfer of surplus from one money purchase plan to another, where the second plan replaces all or part of the first plan.

This amendment, which is consequential to the introduction of subsection 147.3(7.1) of the Act, applies to transactions that occur after 1998.

